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SEVENTH

ANNUAL REPORT

OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND THE

FEDERAL SERVICE IMPASSES PANEL

ORIGINAL

FY 1985

COMPLETED

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LETTER OF TRANSMITTAL

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Section 701 of the Civil Service Reform Act of 1978 (Pub. L. 95-454), 5 U.S.C. 7104(e), provides:

> The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

We submit our Seventh Annual Report for Fiscal Year 1985 (October 1, 1984-September 30, 1985). The Report includes information on the cases heard and decisions rendered by the Federal Labor Relations Authority, the General Counsel of the Authority, the Federal Service Impasses Panel, the Foreign Service Labor Relations Board, and the Foreign Service Impasse Disputes Panel during the year.

Respectfully,

Jerry L. Calhoun, *Chairman*
Federal Labor Relations Authority

Henry B. Frazier III, *Member*
Federal Labor Relations Authority

Jean McKee, *Member*
Federal Labor Relations Authority

John C. Miller, *General Counsel*
Federal Labor Relations Authority

Roy M. Brewer, *Chairman*
Federal Service Impasses Panel

INTRODUCTION

The Seventh Annual Report of the Federal Labor Relations Authority (FLRA) covers the agency's operation from October 1, 1984, through September 30, 1985, fiscal year 1985. The Seventh Annual Report includes information on the cases heard and the decisions rendered by the Authority, the General Counsel of the FLRA and the Federal Services Impasses Panel (FSIP). It also includes the same information on the Foreign Service Impasse Disputes Panel, which was established under Sections 1006 and 1010 of the Foreign Service Act of 1980 (Public Law 95-454).

Financial Statement

The obligations and expenditures of the Federal Labor Relations Authority for Fiscal Year 1985, by type of expense, are as follows (all figures are stated in thousands of dollars):

Personnel Compensation	$11,809
Personnel Benefits: Civilian	1,269
Benefits for Former Employees	——
Travel and Transportations of Persons	676
Transportation of Things	12
Standard Level User Charges	1,921
Communications, Utilities, and other Rent	589
Printing and Reproduction	131
Other Services	498
Supplies and Materials	201
Equipment	165
TOTAL OBLIGATIONS	$17,271

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PART I
The Authority

Under the Federal Service Labor-Management Statute (the Statute), the Authority provides leadership and guidance to Federal agencies and labor organizations on the Federal labor relations program. In FY 1985, case decisions were the primary vehicle for issuing guidance.

There were 737 cases pending in the national office of the Authority at the beginning of FY 1985. During the fiscal year, 545 new cases were filed: 161 unfair labor practice cases, 28 representation cases, 144 negotiability appeals, 210 exceptions to arbitration awards, and 2 miscellaneous cases.

During FY 1985, the Authority closed 822 cases, a 9 percent increase over the number of cases closed in FY 1984, and over 70 more cases than were closed during any previous fiscal year. The Authority issued 293 unfair labor practice and 50 representation case decisions, 198 negotiability determinations, and resolved exceptions to 278 arbitration awards. As a result of the increased case closings, the Authority was able to reduce its inventory of pending cases to 460 at the end of FY 1985, the smallest inventory since the close of FY 1980.

Arbitration Cases

In Fiscal Year 1985, the number of exceptions to arbitration awards filed with the Authority continued at the high rate experienced in the preceding 2 fiscal years. There were 210 arbitration cases filed with the Authority in FY 1985, compared with 220 and 219 filed in FY 1984 and FY 1983, respectively. The number of arbitration cases closed by the Authority in FY 1985 again exceeded the number filed; the Authority closed 278 cases of which 237 were decisions on the merits. Thus, notwithstanding the continued high rate of filings of the last 3 fiscal years, the Authority reduced the number of arbitration cases pending at the end of 1985 to 82 cases, the smallest year-end inventory since FY 1980. This accomplishment was due largely to staff efforts in the continuation and improvement of processing efficiency begun at the end of FY 1983. Further, quicker case resolution was facilitated by the issuance of

several significant lead decisions which could be relied upon as precedent in numerous cases.

In the more significant decisions issued during FY 1985, the Authority resolved disputes involving management's rights and the role of the arbitrator in grievances concerning performance appraisals; the selection of negotiated grievance procedures or unfair labor practice procedures by aggrieved parties; and the proper remedy for agency denial of official time for union representatives engaged in representational activities.

Grievances on Performance Appraisals

In *Bureau of Engraving and Printing, U.S. Department of the Treasury and Washington Plate Printers Union, Local No. 2, IPDEU, AFL-CIO*, 20 FLRA 380 (1985), a case of Governmentwide significance because it involved grievances concerning performance elements, standards and appraisals, the Authority distinguished between management rights to establish performance elements and standards and the application of such elements and standards to employees. A direct challenge to an agency's identification of job elements or the establishment of performance standards is not grievable or arbitrable. The Authority determined, however, that an arbitrator may resolve a grievance alleging that an employee has been adversely affected by management's application of established elements and standards in a performance appraisal. In resolving the grievance, the arbitrator may determine that management failed to apply the established elements and standards to the grievant or applied them in violation of law, regulation, or the collective bargaining agreement. As a remedy, the arbitrator only may direct that the grievant's work product be reevaluated by management using its established elements and standards, or that the grievant's work, as evaluated in management's appraisal, be granted the rating to which entitled under the established elements and standards. The arbitrator may not substitute his or her judgment for that of management as to the appropriateness of the established elements and standards and may not conduct an independent evaluation of the employee's performance under those elements and standards.

Election of Remedy

During FY 1985, the Authority further clarified the election of remedy provision set forth in section 7116(d) of the Statute. That section, of importance to all aggrieved parties, provides that in general, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised as an unfair labor practice, but cannot be raised under both procedures. In the cases decided in FY 1985, the Authority held that a grievance is precluded if the issue raised is substantially the same as was previously raised under the unfair labor practice procedure, and the selection of the unfair labor practice procedure was at the discretion of the aggrieved party. *Department of Defense Schools, Pacific Region and Overseas Education Association*, 17 FLRA 1001 (1985). The critical election event occurs when the unfair labor practice charge or grievance is filed. Thus, the Authority held that a grievance was precluded where the issue was raised in an unfair labor practice charge although the charge was withdrawn prior to adjudication. *Headquarters, Space Division, Los Angeles Air Force Station, California and American Federation of Government Employees, Local 2429*, 17 FLRA 969 (1985). With regard to the election being made at the discretion of the aggrieved party, it is not necessary that the filing parties be identical. Preclusion occurs when the choice of procedures is made by the aggrieved party regardless of who formally filed the charge. The determination is made on the basis of the particular circumstances present. *See Immigration and Naturalization Service, U.S. Department of Justice and American Federation of Government Employees, Local 40*, 18 FLRA 412 (1985).

Official Time

Another area of significant case law developed during this fiscal year involved the proper remedy for wrongfully denied official time under section 7131(d) of the Statute. Section 7131(d) provides that official time be granted for specified representational activities. In a series of cases presented to the Authority, *Social Security Administration and American Federation of Government Employees, AFL-CIO*, 19 FLRA 887 (1985); *U.S. Department of the Air Force, Headquarters Oklahoma City Air Logistics Center, Tinker Air Force*

Base, Oklahoma and American Federation of Government Employees, Local 916, 19 FLRA 890 (1985); *Social Security Administration and American Federation of Government Employees, AFL-CIO, Local 3231*, 19 FLRA 932(1985); *Social Security Administration and American Federation of Government Employees, AFL-CIO, Local 1164, American Federation of Government Employees, AFL-CIO and Social Security Administration, Boston Region*, 19 FLRA No. 110 (1985), a union representative was wrongfully denied official time to perform representational activities, and thereafter, performed the activities on nonduty time (i.e., outside regular work hours) and filed a grievance. In each of these cases, the Authority determined that the only proper remedy under the Statute is payment for the amount of time that should have been official time. Accordingly, pursuant to its authority under section 7122 of the Statute to take such action concerning an award as it considers necessary, the Authority modified each award to order the remedy of compensation at the appropriate straight-time rate as a substitute for the overtime, official time, or administrative leave hours erroneously awarded by the arbitrators.

In summary, the Authority not only closed a signficant number of cases and further reduced its pending arbitration caseload during FY 1985, but also decided a number of important issues which should assist unions and agencies in resolving disputes and avoiding litigation on similar issues in the future.

Negotiability Cases

There were 275 negotiability appeals pending before the Authority at the start of FY 1985; 143 negotiability appeals were filed and 198 were closed during this period. These figures compare with 156 filed and 173 closed during fiscal year 1984. The combination of increased productivity and decreased filing resulted in the negotiability case inventory being reduced to 220 by the end of FY 1985.

In addition to making some inroads into the negotiability case inventory during fiscal year 1985, the Authority articulated significant principles in a number of major areas defining the scope of the duty to bargain under the Statute—employee discipline, leave, official time, temporary promotions, and work schedules. The development of the case law will result in further decreases in case inventory during the next fiscal year.

Employee Discipline

During FY 1985, the Authority acted on a line of cases of significance to the entire Federal work force, namely provisions relating to employee discipline. First, in *National Federation of Federal Employees, Local 615 and National Park Service, Sequoia and Kings Canyon National Parks, U.S. Department of Interior*, 17 FLRA 318 (1985), the Authority held that a provision of a collective bargaining agreement which provided that an investigation of an incident for which disciplinary action may be taken must be initiated within 60 days after the occurrence of the incident, or within 60 days after the employer became aware of the incident, was not negotiable. The Authority found that because a thorough investigation is the necessary precursor to disciplinary action in most instances, prohibiting the initiation of an investigation after the expiration of the period of time prescribed in the provision would effectively preclude the imposition of discipline itself. Consequently, the Authority concluded that the provision was violative of management's right to discipline.

A second case of significance in the employee discipline area is *National Federation of Federal Employees, Local 1437 and U.S. Army Armament Research and Development Command, Dover, New Jersey*, 17 FLRA 615 (1985), where a union proposal would have permitted an employee to invoke arbitration on his or her own behalf in circumstances where the employee's grievance was not resolved in the negotiated grievance procedure to the satisfaction of the employee. The Authority determined that only the exclusive representative or the agency may invoke arbitration, and that the proposal was therefore not negotiable. A second union proposal in the same case was intended to enable an employee to seek court review of an unresolved grievance in the absence of an arbitration would constitute an exhaustion of remedies for the purpose of establishing the court's jurisdiction. The Authority held that the determination of when an employee has exhausted administrative remedies for purposes of invoking judicial review does not pertain to conditions of employment within the meaning of section 7103(a)(14) of the Statute and therefore is not negotiable.

Finally, in the area of employee discipline, in *Police Association of the District of Columbia and Department of the Interior, National Park Service, U.S. Park Police*, 18 FLRA 348 (1985), a union proposal would have provided unit employees the option, in cases of proposed minor disciplinary action, of appealing the decision of sum-

mary hearings or trial boards to the Secretary of the Interior or through the negotiated grievance procedure. The Authority determined that Public Law 87-979 provided that appeals from summary hearings and trial boards go only to the Secretary of the Interior whose decision as to such matters is final and conclusive. The Authority noted it had held that where an appeals procedure regarding a particular subject matter was established by law as the exclusive procedure for that matter, issues covered by the procedure are not within the scope of the grievance procedure negotiated pursuant to section 7121 of the Statute. Thus, the Authority concluded that the general intent of section 7121 of the Statute for a broad scope grievance procedure did not repeal the express provisions of Public Law 87-797 which specifically provided that such provisions will take effect "notwithstanding . . . any other laws," and that the union's proposal was outside the duty to bargain.

Leave

Another area of significance to all Federal employees is that of leave, and here the Authority made two important rulings in FY 1985. In *American Federation of Government Employees, AFL-CIO, National Council of Field Labor Locals and Department of Labor*, 17 FLRA 122 (1985), a union proposal required the agency to grant employees administrative leave equal to the number of hours or days spent in furlough status in the event that the agency's supplemental appropriation legislation was enacted. The Authority determined that the granting of administrative leave is a matter affecting working conditions of unit employees, is within the discretion of the agency and, that since the agency had not shown that the exercise of such discretion through negotiation would be inconsistent with law or Governmentwide regulations, the proposal was within the duty to bargain.

In a consolidated decision, in *National Association of Government Employees, Local R14-62 and U.S. Army Dugway Proving Ground, Dugway, Utah*, 18 FLRA 307 (1985), two identical proposals provided that during periods of partial closure of the agency's facilities such as during the Christmas-New Year holiday period, employees would be placed on administrative leave instead of being required to take annual leave. The Authority concluded that since the agency had demonstrated that its regulations prohibiting administrative

leave during periods of partial closure were essential to achieving its objective of reducing expenditures during periods of unproductive operation, it had established that a compelling need existed for such regulations so as to bar negotiation of the union's proposals.

Official Time

In the area of official time—a continuing concern in Federal labor relations—in *American Federation of Government Employees, AFL-CIO Council of Locals No. 214 and Department of the Air Force, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio,* 19 FLRA 215 (1985), a union proposal provided for 12 full-time union representatives. The Authority noted that under its precedent, where an agency can show in the circumstances of a given case, that the use of official time will interfere with the accomplishment of the agency's work, the exercise of management's rights will take precedence over the right of an exclusive representative to negotiate for official time. In this case the employees were highly skilled and worked in crews which depended on individual skills. There were fewer authorized positions than the number needed to perform the work, resulting in the use of overtime, leaving work undone, or completion of work behind schedule. The loss of 12 unit employees to be full-time union representatives, therefore, could necessitate a reallocation of additional positions or employees from other work projects or organizational entitles. Thus, the Authority found that the union's proposal in these circumstances would be determinative of the number of employees or positions assigned to the work project or organizational entity, matters which are negotiable only at the election of the agency under section 7106(b)(1) of the Statute.

Temporary Promotions

Again, in a matter of widespread effect, the Authority in a consolidated decision in *National Association of Government Employees, Local R12-29 and Department of the Navy, Naval Construction Battalion Center, Port Hueneme, California; American Federation of Government Employees, AFL-CIO, Local 48 and Department of the*

Navy, Naval Supply Center, Puget Sound, Bremerton, Washington; Point Mugu Council of National Association of Government Employees, Local R12-33, National Federation of Federal Employees, Local 1374 and Department of the Navy, Pacific Missile Test Center, Point Mugu, California, 19 FLRA 939 (1985), held negotiable proposals which provided that employees who were detailed to higher graded positions (including supervisory positions) for periods of time from 5 calendar days to 39 workdays, would be temporarily promoted. The question before the Authority was whether these otherwise negotiable matters were barred from negotiation by an agency regulation which prohibited temporary promotions for periods of time less than 31 days and for which a compelling need was claimed to exist. The Authority determined that the agency had not demonstrated a compelling need for the regulation. Specifically, the additional administrative costs associated with temporarily promoting employees for less than 31 days were not of such nature and amount to be inconsistent with an effective and efficient Government. The Authority also found that the regulation was not necessary to insure the maintenance of basic merit principles, and that it did not implement a mandate to the agency under law or OPM directives. Consequently, the Authority concluded that matters at issue were not barred from negotiation by an agency regulation and thus were within the duty to bargain.

In *Bremerton Metal Trades Council, AFL-CIO and Department of the Navy, Pugent Sound Naval Shipyard, Bremerton, Washington*, 19 FLRA 1023 (1985), a union provision would have required the agency to retroactively effect temporary promotions for employees who had been detailed to higher grade positions for more than 14 days if the Authority found in *National Association of Government Employees, Local R12-29 and Department of the Navy, Naval Construction Battalion Center, Port Hueneme, California*, (and cases discussed above consolidated with it) 19 FLRA 939 (1985), that a compelling need did not exist for an agency regulation prohibiting temporary promotions for less than 31 days. The Authority held, based on prior precedent, however, that in order for a backpay order to be authorized under the Back Pay Act there must be a determination that an employee has been adversely affected by an unjustified or unwarranted personnel action and a determination that but for the improper action, such employee would not have suffered a loss or reduction in pay, allowances, or differentials. The Authority found that under the Statute either party has the right not to agree to any proposal and the issuance of a bargaining order, as occurred in

Naval Construction Battalion Center, Port Hueneme, is not a requirement that the parties agree to a particular proposal. Furthermore, the Authority noted that an agency has the right under the Statute to allege a proposal to be nonnegotiable, as the agency did in *Naval Construction Battalion Center, Port Hueneme*. Thus, the Authority concluded, the agency's assertion in this case of its rights to not agree to a proposal and to allege a proposal to be nonnegotiable does not constitute an unjustified or unwarranted personnel action warranting retroactive adjustment of an employee's compensation under the Back Pay Act upon the Authority's issuing a bargaining order. Thus, the Authority determined that this proposal is inconsistent with the Back Pay Act, and therefore is outside the duty to bargain.

Work Schedule

The last area of FY 1985 significant negotiability cases to be discussed is that involving work schedules. In *Maritime/Metal Trades Council and Panama Canal Commission*, 18 FLRA 326 (1985), a union proposal required the agency to make every effort to establish work schedules whereby employees would work 6 weeks and then have 4 weeks off or a schedule in which employees would have equal time off for time on. The Authority determined that under the Federal Employees Flexible and Compressed Work Schedules Act of 1982, (5 U.S.C. § 6122), an employee is precluded from accumulating more than 24 credit hours during one biweekly pay period for use during the following pay period. Since the union's proposal would require the accumulation of 160 credit hours during 3 pay periods for use in the following 2 periods, the Authority determined that the proposal was inconsistent with express provisions of the Compressed Work Schedules Act and, therefore, outside the duty to bargain.

In *National Treasury Employees Union, Chapter 204 and Federal Elections Commission*, 19 FLRA 234 (1985), a union proposal concerned the determination of when the 8-hour workday and the day off would occur in the context of a trial compressed work week wherein an employee's 80 hour pay period is comprised of eight 9 hour work days, one 8 hour work day and one day off. The Union's proposal permitted the agency to impose reasonable restrictions in determining an employee's schedule. The Authority found that subjecting management's scheduling determinations to a standard of

reasonableness would permit the substitution of an arbitrator's judgment for that of management in deciding to whom and when work will be assigned. Thus, the Authority concluded that the proposal was inconsistent with management's right to assign work.

A later case further clarified the negotiability of provisions concerning the scheduling of work. In *National Treasury Employees Union, Chapter 65 and Department of the Treasury, Internal Revenue Service*, 20 FLRA 35 (1985), a union proposal provided that under the parties' Alternative and Compressed Work Schedule Agreement no more than 30% of employees could be scheduled to be off on any given workday, but that work units presently exceeding 30 percent could continue with that percentage. The Authority found that the first part fo the proposal would permit management to disapprove schedules for legitimate reasons and would not interfere with the right to assign work or direct employees. Thus, the Authority concluded that the first part of the proposal was within the duty to bargain. The Authority determined, however, that the second portion of the proposal was not negotiable because it was inconsistent with the right of the agency to assign work to particular employees or positions and to determine when the work which has been assigned will be performed.

Representation Cases

The number of pending representation cases with the Authority continued to be reduced in FY 1985. There were 27 representation cases pending at the start of FY 1985—down from 59 a year earlier—and only 5 at the end of FY 1985. Representation case filings dropped from 40 in FY 1984 to 28 in FY 1985. The decrease appears attributable to the delegation of decisionmaking responsibility to the Authority's Regional Directors. That delegation, in effect at the start of FY 1984, empowers Regional Directors to issue final decisions and orders in representation matters subject to a limited right of appeal to the Authority.

In *U.S. Department of Labor/Occupational Safety and Health Administration*, 18 FLRA 408 (1985), the Authority agreed with the Regional Director's *Decision and Order Clarifying Unit* that certain employees were not management officials under the Statute and were therefore included in the unit of exclusive recognition. The next representation case decided in FY 1985 was *Department of*

Transportation, Federal Aviation Administration, New England Region, 20 FLRA 224 (1985), where the Authority determined that a regionwide unit of air traffice controller employees was not appropriate because the employees in the proposed unit did not share a community of interest separate and distinct from the air traffic controllers located in the FAA's other regions. Rather, all were engaged in the same mission of administering the unified nationwide air traffic safety control system under a strict requirement of nationwide uniformity. The Authority, thus found that a nationwide unit would reduce the potential for inconsistency among the regions.

Unfair Labor Practice Cases

The Authority closed 293 unfair labor practice cases. These represented a 61 percent increase over the 182 unfair labor practice cases closed in FY 1984. Even more dramatically, the number of unfair labor practice cases issued on merits rose from 125 in FY 1984 to 240 in FY 1985, a 92 percent increase. The increased productivity, combined with a slight decrease in the number of new cases received, resulted in a 47 percent decrease in pending cases between the beginning and end of FY 1985. The overall increase in unfair labor practice case issuances resulted from continued use of a ULP Task Force and the increasing frequency with which issues presented in the cases can be resolved based on precedential decisions.

During FY 1985, several significant unfair labor practice decisions applying the provisions of the Statute were issued. These cases included the duty to bargain, representation rights and obligations, the extent of protected activity, union dues withholding, official time, union participation by particular employees listed in section 7120(e) of the Statute and available remedies. The most significant are summarized below.

Duty to Bargain

Generally an agency is obligated to deal with the exclusive representative of its employees and may not deal or negotiate directly with such employees. Thus, in *Department of Treasury, Internal Revenue Service, Memphis Service Center*, 17 FLRA 107 (1985), the Authority found that an agency engaged in unlawful conduct when

it bypassed the exclusive representative and attempted to resolve a unit employee's grievance by dealing directly with the grievant's husband rather than with the exclusive representative.

Similarly, in *United States Department of Transportation, Federal Aviation Administration*, 19 FLRA 893 (1985), the Authority found that management's direct solicitation of unit employees' opinions concerning proposed changes in their conditions of employment constituted an unlawful bypass of the exclusive representative in violation of section 7116(a)(1) and (5) of the Statute. The Authority noted particularly that management was not merely attempting to gather information or opinions concerning its operations. Rather, the information sought concerned immediately contemplated changes in conditions of employment and was an attempt to negotiate or deal directly with unit employees.

In *Internal Revenue Service (District, Region, National Office Units)*, 19 FLRA 353 (1985), however, the Authority reiterated its prior holding that the prohibition on management's negotiating or directly dealing with unit employees does not always prevent an agency from seeking information or opinions directly from its employees, and found that the agency did not unlawfully bypass the union by distributing questionnaires to unit employees regarding their conditions of employment. The Authority explained that as part of management's responsibility for efficient and effective operation, employees may be questioned directly providing that the questioning is not done in a manner which amounts to an attempt to negotiate directly that which is properly bargainable with the exclusive representative. The Authority noted that in this case, the questionnaires were an information gathering mechanism for use by management in studying its operations and that there was no indication that the agency was attempting to deal or negotiate directly with unit employees concerning their conditions of employment in derogation of the duty to bargain with the exclusive representative. Similarly, the Authority determined in *Department of Health and Human Services, Social Security Administration*, 19 FLRA 415 (1985), that the agency did not violate the Statute by soliciting suggestions with respect to the conditions of employment of disabled or handicapped employees. The Authority held that the distribution of a memorandum and the holding of a "Town Hall" meeting was not an attempt to negotiate directly with employees. Analogous situations were addressed in *Department of Defense, Office of Dependents Schools*, 19 FLRA 762 (1985); *United States*

Customs Service, 19 FLRA 1032 (1985); and *Social Security Administration*, 20 FLRA 125 (1985).

Bargaining to Impasse

The Authority in several cases addressed the mutual obligation to bargain in good faith in the context of bargaining to impasse. In *Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms*, 18 FLRA 466 (1985), the Authority held that once parties have reached an impasse in negotiations and one party has timely invoked the services of the Federal Service Impasses Panel (the Panel), in order to allow the Panel to take whatever action is deemed appropriate, the *status quo* must be maintained to the maximum extent possible, i.e., to the extent consistent with the necessary functioning of the agency. In an unfair labor practice proceeding which challenges an agency's action in changing the *status quo* while an impasse is before the Panel, the agency is required to come forward with affirmative support for its assertion that such action is consistent with the necessary functioning of the agency. In the absence of such a showing, a failure or refusal to maintain the *status quo* constitutes an unfair labor practice in violation of section 7116(a)(1), (5) and (6) of the Statute.

The Authority had previously held that parties may bargain to impasse over mandatory subjects of bargaining, but in *Federal Deposit Insurance Corporation, Headquarters*, 18 FLRA 768 (1985), addressed for the first time the applicability of this policy to permissive subjects of bargaining. The Authority held that because parties are not required to negotiate over a permissive subject of bargaining, they cannot insist on bargaining to impasse with respect to such matters.

Obligation to Consult

In two FY 1985 cases, the Authority addressed and further clarified one of the cornerstones of the Federal collective bargaining process, the obligation to consult set forth in sections 7113 and 7117(d) of the Statute. In *National Guard Bureau*, 18 FLRA 475 (1985), the Authority held that 1 day's notice of a substantive change in a condition of employment to the labor organization having national consultation rights did not comply with section 7113 of

the Statute and constituted an unfair labor practice. The exclusive representative must be provided with reasonable time to present its views and recommendations regarding substantive changes in conditions of employment and such views must be considered by the agency before it takes final action. In *Office of Personnel Management*, 18 FLRA 659 (1985), the Authority held that the obligation to consult under section 7117(d) does not arise unless there is a substantive change in a condition of employment. In this case, the issuance of a particular FPM Installment regarding special pay rates was essentially a restatement of an existing regulation and thus did not constitute a substantive change of a condition of employment.

Representation Rights and Obligations

Section 7114(a)(1) of the Statute provides that a union which has been accorded exclusive recognition status is responsible for representation of all unit employees without discrimination and without regard to labor organization membership. In further clarifying the ramifications of this provision, the Authority found that distinguishing between members and nonmembers with regard to the furnishing of attorneys or representatives in grievance proceedings or proceedings before the Merit System Protection Board constituted an unfair labor practice. *See National Treasury Employees Union and National Treasury Employees Union, Chapter 121*, 16 FLRA 717 (1984); *American Federation of Government Employees, AFL-CIO, Local 916*, 18 FLRA 5 (1985); and *Service Employees International Union, Local 556, AFL-CIO*, 17 FLRA 862 (1985). Thus, charging nonmember employees disparate fees to participate in a class action lawsuit constituted a failure of the union to meet its obligations under section 7114(a) and was violative of section 7116(b)(1) and (8) of the Statute. In *American Federation of Government Employees, AFL-CIO*, 17 FLRA 446 (1985), the Authority held that the duty of fair representation of all unit employees extended to all situations where an exclusive representative decided to represent unit employees with regard to matters affecting their conditions of employment. Again, in *National Treasury Employees Union and National Treasury Employees Union, Chapter 204*, 18 FLRA 299 (1985), the Authority reiterated its holding that the duty of nondiscriminatory representation extends beyond representation in a formal or adversarial proceeding and found that the union violated

section 7116(b)(1) and (8) of the Statute by discriminating between union and nonunion members with regard to affording time to inquire about their eligibility to receive cash awards, a matter affecting their conditions of employment.

Union's Rights as Union

In *Department of Health and Human Services, Social Security Administration*, 18 FLRA 42 (1985), the Authority addressed the right of the union to be represented under section 7114(a)(2)(A) and 7114(a)(2)(B) of the Statute. This is a matter of maximum significance to Federal unions because it pertains to a union's right as a union rather than as an employee representative. The Authority found that section 7114(a)(2)(A) grants an absolute right to the union to be present at a formal discussion between representative(s) of an agency and one or more employees or their representatives concerning any grievance, personnel policy or practices or other general conditions of employment. Section 7114(a)(2)(B), however, only entitles a union to be represented at the request of an employee at an examination of an employee by an agency representative in connection with an investigation when the employee reasonably believes that the examination may result in disciplinary action against the employee. In the cited case, the issue was the union's right to be represented at a meeting where management's representative was examining a unit employee in connection with an investigation intended to gather facts for the purpose of rendering a decision in a pending grievance. The Authority determined that the union did not have a right to be present because the meetings were not formal under section 7114(a)(2)(A), rather they were informal meetings in connection with an investigation, but they were not covered by section 7114(a)(2)(B) because there was no question of disciplinary action against the employees being interviewed and in any event no request by such employee for union representation.

Approval of Agreement by Agency Head

Under section 7114(c) of the Statute, an agreement between any agency and an exclusive representative is subject to approval by the head of the agency. This is particularly important in large agencies

where the negotiations are completed at levels reviewed for the head of the agency. Further, in *U.S. Department of Army, Headquarters, and DARCOM HQ*, 17 FLRA 84 (1985), the Authority found that this authority extends to review of an agreement imposed on the parties by the Federal Service Impasses Panel. In this situation, however, the agency head only may disapprove of provisions which are not in accordance with the Statute or any other applicable law, rule, or regulation.

Duty to Furnish Information

The Statute provides at section 7114(b)(4), that the duty to bargain in good faith includes the agency's obligation to furnish certain necessary information to the exclusive representative upon request. During FY 1985, the Authority addressed the extent of this obligation in several contexts. In one line of cases, the Authority found that in the absence of specific proof of necessity, agencies are not obligated to provide an exclusive representative with information regarding supervisors or nonbargaining unit employees. The Authority held that such information would not ordinarily be necessary for the union's performance of its responsibilities "to act for, and negotiate collective bargaining agreements covering, all employees in the unit" pursuant to section 7114(a)(1) of the Statute. *See Social Security Administration and Northeastern Program Service Center*, 18 FLRA 490 (1985); *Department of Defense Dependents Schools, Washington, D.C. and Department of Defense Dependents Schools, Germany Region*, 19 FLRA 790 (1985); and *Department of the Air Force, Scott Air Force Base, Illinois*, 18 FLRA 629 (1985), respectively.

With regard to union rights to information under section 7114(b)(4), the Authority held in *Library of Congress*, 19 FLRA 267 (1985), that when a forum other than the negotiated grievance procedure is selected by the employee, the union is limited, as a representative of the employee, to the disclosure procedures of the forum selected. The Authority reasoned that all persons included in regulatory procedures are to be treated equally, regardless of union representation.

Impermissible Participation in the Management of a Labor Organization

Section 7120(e) of the Statute prohibits management officials, supervisors, and confidential employees both from acting as a representative of a labor organization and from participating in its management. In *United States Department of Labor*, 20 FLRA 296 (1985), the Authority found that participation in the selection of union officers or in the selection of union options on alternative courses of action constitutes "participation in the management of a labor organization" and is therefore proscribed by section 7120(e). Accordingly, the Authority held that the agency committed an unfair labor practice by permitting its supervisors to vote in the union's internal election.

Remedies

Under section 7105(g)(3) of the Statute, the Authority is empowered to "require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter." The Authority in FY 1985 continued to seek appropriate remedies on a case-by-case basis; the attempt is to correct the particular situation, diminishing any adverse impact to the extent possible, and avoid repetition of the violations.

Where the agency's decision itself, rather than its impact of implementation was within the duty to bargain, *status quo ante* remedies were appropriate. Such cases included agency refusals to bargain over starting times, shuttle bus service, and parking spaces. The remedy effectively restored the policies in effect prior to the agency's action. *See, e.g., Department of Health and Human Services, Social Security Administration, Baltimore, Maryland*, 16 FLRA 674 (1984); *U.S. Department of Transportation, Federal Aviation Administration, Airways Facilities Sector, Chicago O'Hare Airport, Chicago, Illinois*, 16 FLRA 1001 (1984); and *U.S. Immigration and Naturalization Service*, 16 FLRA 1007 (1984), respectively.

In *United States Department of Defense, Department of the Air Force, Headquarters 47th Flying Training Wing (ATC), Laughlin Air Force Base, Texas*, 18 FLRA 142 (1985), where the Authority found that an employee would have been promoted but for the

agency's improper consideration of his union activities, it ordered the agency to retroactively promote him, award backpay, and restore any rights or privileges which may have been lost as a result of the agency's improper action. Posting of notice of the action was also ordered.

Remedial orders issued against unions included one in *National Association of Government Employees, Local R5-66*, 17 FLRA 796 (1985), where the Authority directed the union to unconditionally offer reinstatement to an employee who had been unlawfully expelled from the union and to post notice of its action. In *National Treasury Employees Union and National Treasury Employees Union, Chapter 121*, 16 FLRA 717 (1984), the Authority ordered a broad remedial posting where a similar violation had previously been found against the union; where the violative conduct involved a continuing national policy of the union which had been publicized and disseminated nationwide; and where the wrongful policy had been applicable to all employees in the union's units of exclusive recognition.

Office of Administrative Law Judges

The Office of Administrative Law Judges entered FY 1985 with 325 pending cases. During the year it received 700 additional cases and disposed of 856, ending the year with 169 cases pending. The dispositions included 694 cases which were withdrawn, settled or stipulated to the Authority and 162 which were decided by the Judges. The corresponding figures for FY 1984 were 755 cases received, 657 settled, withdrawn or stipulated and 152 decided.

Of the 700 cases received, 21 (or 3 percent) were filed against labor organizations, and the balance against agencies. The year before, 23 cases were filed against unions. No representation cases were handled by the Judges.

Office of the Solicitor

The responsibilities of the Office of the Solicitor include representing the Authority in litigation and providing legal advice to the Authority. With respect to the litigation function, FY 85 saw an increase in the number of filings of court cases to which the Authority

was a party; 96 such cases were initiated during the fiscal year, compared with the 47 cases filed during the previous year. As to cases closed this year, courts issued decisions on a wide range of substantive and jurisdictional matters involving the Federal Service Labor-Management Relations Statute (Title VII of the Civil Service Reform Act of 1978, Pub. L. 95-454). Those having the most significance are summarized below.

Enforcement of Decisions

In *FLRA v. Social Security Administration*, 753 F.2d 156 (D.C. Cir. 1985), the court enforced the Authority's order in *Social Security Administration*, 11 F.L.R.A. 390 (1983). The Authority had found that the Social Security Administration (SSA) had committed unfair labor practices by unilaterally implementing and subsequently terminating flexitime schedules and ordered SSA to cease and desist from its conduct and take certain affirmative action. The court held that the Authority's order was supported by substantial evidence and that the order was not at variance with the Federal Employees Flexible and Compressed Work Schedules Act of 1982. Further, the court held, citing *FLRA v. United States Department of the Air Force*, 735 F.2d 1513 (D.C. Cir. 1984), that an agency's compliance with an order of the Authority does not prevent the Authority from seeking enforcement. The court stated that the Authority had "found that the SSA persisted in its unlawful conduct well after it should have understood that it was required to bargain with the AFGE National[,]" and that the court could not say "that the likelihood of any further refusals to bargain is so marginal as to make enforcement inappropriate."

National Guard Civilian Technicians

In a series of cases, several courts upheld Authority decisions involving the attire to be worn by National Guard civilian technicians. The first of these court decisions was *New York Council, Association of Civilian Technicians v. FLRA*, 757 F.2d 502 (2d. Cir.), *cert. denied*, 106 S. Ct. 137 (1985), affirming the Authority's decision in *Division of Military and Naval Affairs, State of New York, Albany, New York*,

15 F.L.R.A. 288 (1984). The Second Circuit had remanded the case for consideration of whether National Guard civilian technician's attire concerns a management right under section 7106(b)(1) of the Statute to determine unilaterally the methods and means of performing work. On remand, the Authority held that it did. Consequently, the Authority further determined that the Guard did not commit an unfair labor practice when it declined to adopt a contract provision ordered by the Federal Service Impasses Panel (FSIP) which would have given Guard technicians the option of wearing civilian attire rather than the military uniform. The court affirmed the Authority's holding and upheld the procedures the Authority had followed on remand. Similar results were reached in the following cases: *American Federation of Government Employees, Local 3013 v. FLRA* and *American Federation of Government Employees, Local 3936, v. FLRA*, 762 F.2d 183 (1st Cir. 1985), affirming the Authority's decisions in *Puerto Rico Air National Guard*, 15 F.L.R.A. 482 (1984) and *National Guard Bureau, Maine Air National Guard*, 15 F.L.R.A. 485 (1984); and *National Association of Government Employees, Locals R5-91, R5-107 and R5-120 v. FLRA*, 771 F.2d 1449 (11th Cir. 1985), affirming the Authority's decision in *Florida Air National Guard*, 15 F.L.R.A. 896 (1984).

In *Association of Civilian Technicians, Montana Air Chapter v. FLRA*, 756 F.2d (D.C. Cir. 1985), reviewing 11 F.L.R.A. 505 (1983), the D.C. Circuit affirmed in part, and reversed and remanded in part, the Authority's rulings of nonnegotiability with respect to five proposals in *ACT, Montana Air Chapter and Montana Air National Guard*, 11 F.L.R.A. 505 (1983). The proposals all concerned the rights of National Guard employees affected by a reduction in force. The significance of this decision is the court's holding that an agency is required to negotiate with respect to "procedures" and "arrangements" as set forth in section 7106(b)(2) and (b)(3), with respect to the exercise of any management rights enumerated in section 7106.

Prosecutorial Distribution of General Counsel

As noted earlier, several cases this year involved jurisdictional issues. In *American Federation of Government Employees, AFL-CIO v. FLRA*, No. 85-1261 (D.C. Cir. Sept. 5, 1985), the D.C. Circuit granted the Authority's motion to dismiss the union's petition for review. AFGE had sought court review of the General Counsel's

decision to affirm the Regional Director's withdrawal of the unfair labor practice complaint issued in *Department of Health and Human Services, Social Security Administration, Racine, Wisconsin*, Case No. 5-CA-50034. The Authority had opposed such review, arguing that the withdrawal of a complaint that was not part of a settlement agreement was an exercise of the General Counsel's nonreviewable prosecutorial discretion.

In *Martinez v. Smith*, 768 F.2d 479 (1st Cir. 1985), *affirming* 595 F. Supp. 778 (D.P.R. 1984), the First Circuit affirmed the decision of the U.S. District Court for the District of Puerto Rico that the District Court lacked subject matter jurisdiction to review a decision of the FLRA's General Counsel not to issue an unfair labor practice complaint. Similarly, in *Lester v. FLRA*, No. 85-1115 (4th Cir. Mem. Order May 22, 1985) and *Hulett v. FLRA*, No. 85-1169 (7th Cir. Mem. Order May 28, 1985), courts dismissed individuals' petitions for review of decisions by the General Counsel not to issue an unfair labor practice complaint. The Authority had moved to dismiss the petitions for review on the basis that such decisions by the General Counsel are not final decisions of the Authority reviewable under 5 U.S.C. §7123(a).

Forum for Compelling Need Issues

Two decisions addressed the issue of the proper forum for the resolution of compelling need issues arising in unfair labor practice proceedings. In *Defense Logistics Agency v. FLRA*, 754 F.2d 1003 (D.C. Cir. 1985), the D.C. Circuit affirmed the Authority's holding in *Defense Logistics Agency*, 12 F.L.R.A. 412 (1983), that when the union selects the unfair labor practice forum to challenge a unilateral change in conditions of employment resulting from a revised agency regulation, and the agency asserts a compelling need for the regulation as a bar to bargaining, the compelling need issue must be resolved in the unfair labor practice case rather than in a separate proceeding.

Subsequently, in *U.S. Army Engineer Center v. FLRA*, 762 F.2d 409 (4th Cir. 1985), the Fourth Circuit reversed and remanded the Authority's decision in *U.S. Army Engineer Center*, 13 F.L.R.A. 707 (1984), in which the Authority had applied its holding in *DLA*. The court disagreed with the D.C. Circuit's affirmance of the Authority in *Defense Logistics Agency v. FLRA*, 754 F.2d 1003 (D.C. Cir. 1985),

and stated that the Statute requires that, where an agency regulation is asserted as a bar to negotiations between a governmental employer and a union, the FLRA must determine that no compelling need for the regulation exists before any duty to bargain arises on the part of the employer. Thus, the Fourth Circuit held that the sole statutory procedure for making the compelling need determination is a negotiability appeal prescribed by 5 U.S.C. §7117(b) and the relevant FLRA regulations.

Performance Appraisal

During this fiscal year, there have been several cases dealing with negotiability of proposals relating to employee performance. Among these was *National Treasury Employees Union v. FLRA*, 767 F.2d 1315 (9th Cir. 1985), where the Ninth Circuit affirmed the Authority's supplemental decision on remand in *National Treasury Employees Union and Department of Health and Human Services, Region 10*, 13 F.L.R.A. 732 (1982) (involving Case No. 0-NG-299, 7 F.L.R.A. 727). The proposals at issue concerned standards and procedures to be used in establishing critical elements. Although the union characterized its proposals as procedural, and none would necessarily designate critical elements or specify performance standards, the court agreed with the FLRA that there was potential for impermissible interference with management's right to assign and direct work. Thus, the court found the proposals nonnegotiable.

Promotion

In *Department of the Treasury, U.S. Customs Service, Washington, D.C. v. FLRA*, 762 F.2d 1119 (D.C. Cir. 1985), the D.C. Circuit vacated the Authority's decision in *National Treasury Employees Union and Department of the Treasury, U.S. Customs Service, Washington, D.C.*, 11 F.L.R.A. 247 (1983). The disputed proposal involved a set of measuring devices to be used in crediting plans for merit promotions in bargaining unit positions. The Authority held the proposal negotiable; the court disagreed. The court, in agreement with the Second Circuit's decision in *Customs Service, Region II v. FLRA*, 739 F.2d 829 (2d Cir. 1984), found the proposal nonnego-

tiable, but based its holding on a different analysis. The Second Circuit held that the proposal would interfere with management's right to determine the personnel by which agency operations shall be conducted under section 7106(a)(2)(B) of the Statute. The D.C. Circuit stated that "[i]t is not clear to use that [the Second Circuit's] mode of analysis is sound," and held that the proposal was nonnegotiable because it was inconsistent with Governmentwide regulation under section 7117(a)(1) of the Statute. The Governmentwide regulation is 5 C.F.R. §300.103(a) (1983), which requires, that an employment practice such as a measurement instrument be "based on a job analysis to identify . . . the factors that are important in evaluating candidates." In the court's view, the proposal was not based on job analyses of all or related groups of the thousands of diverse positions to which it would apply and was thus contrary to the requirements of the regulation, and therefore nonnegotiable.

mployee Discipline

In *United States Immigration and Naturalization Service v. FLRA*, No. 84-7166 (9th Cir. Apr. 1, 1985), the Ninth Circuit enforced the Authority's order in *United States Immigration and Naturalization Service, San Diego, California*, 13 F.L.R.A. 591 (1984). In that case, the Authority held that the agency had committed an unfair labor practice when it disciplined an employee for the conduct of his union representative at an investigatory interview. In enforcing the Authority's order, the court held that the Authority's finding that the employee was impermissibly disciplined for his representative's conduct was supported by substantial record evidence.

Contracting-out

The negotiability of proposals relating to "contracting-out" continued to warrant attention in fiscal year 1985. In *EEOC v. FLRA*, 744 F.2d 842 (D.C. Cir. 1984), the United States Supreme Court granted the Equal Employment Opportunity Commission's petition for a writ of certiorari in No. 84-1728 (June 24, 1985). As discussed in last year's report, the D.C. Circuit upheld the Authority's holding (in 10 F.L.R.A. 3 (1982)) that a bargaining proposal requiring EEOC

to comply with applicable laws and regulations concerning contracting-out is negotiable.

Another contracting-out proposal was at issue in *Defense Language Institute, Presidio of Monterey, California v. FLRA*, 767 F.2d 1398 (9th Cir. 1985). There, the Ninth Circuit declined to enforce the Authority's order in *National Federation of Federal Employees, Local 1263 and Defense Language Institute, Presidio of Monterey, California*, 14 F.L.R.A. 761 (1984), finding negotiable a provision that all contracting out data in an "in-house" cost estimate "will be corrected where the union demonstrates that it is not valid or prepared in accordance with existing directives."

The court, disagreeing with the D.C. Circuit's affirmance in the *EEOC* case, found that the effect of the provision would be to subject in-house cost estimates to arbitral review and subsequent review by the Authority, and that the proposal would divest management of the essence of its statutory authority to contract out.

Official Time

Disputes over official time provisions also continued during this fiscal year. In *AFGE v. FLRA*, 750 F.2d 143 (D.C. Cir. 1984), the District of Columbia Circuit reversed the Authority's *Interpretation and Guidance*, O-MC-7, issued as 7 F.L.R.A. 682 (1982), which held that the official time provisions of section 7131(a) of the Statute do not encompass negotiations designed to create local agreements to supplement a national or controlling (master) agreement. The court found no basis for distinguishing local agreement negotiations from national negotiations with respect to the grant of official time and thus found the Authority's interpretation to be in error.

PART II
Office of the General Counsel

The General Counsel of the Federal Labor Relations Authority is appointed by the President of the United States, by and with the advice and consent of the United States Senate, for a term of 5 years. John C. Miller of Maryland has served as General Counsel since March 1983.

The General Counsel has independent authority to investigate unfair labor practice charges. He is responsible for the issuance and prosecution of all complaints before the Authority, and for reviewing and deciding all appeals of decisions of the Regional Directors in refusing to issue complaints. The General Counsel is also responsible for the FLRA's field offices.

Regional Directors, under the direction of the General Counsel, in addition to processing unfair labor practice charges, have the delegated authority to investigate representation petitions and to make determinations with respect to the disposition of these petitions. The Office of the General Counsel has been delegated responsibility for supervising or conducting all representation elections and for certifying the results of these elections to the parties. Further, responsibility has been delegated to the Office of the General Counsel to conduct hearings in representation petitions, and to issue Decisions and Orders based on these hearings, subject to a limited and discretionary right of review by the Authority upon appropriate application by one or more of the parties to the proceeding.

Nine Regional Offices were in operation in Fiscal Year 1985—Boston; New York; Washington, D.C.; Atlanta; Chicago; Dallas; Denver; Los Angeles; and San Francisco. Three sub-Regional Offices were also in operation during the fiscal year—Philadelphia, Cleveland, and Honolulu. However, the field office in Honolulu, Hawaii, was closed during 1985.

Management Improvements

In Fiscal Year 1985, the Office of the General Counsel initiated several significant management improvements.

Deficient Cases

The General Counsel reaffirmed the requirement that unfair labor practice charges filed with the Regional Offices must present a clear and concise statement of the facts constituting the basis of the charge and must also include the date and place of occurrence of the particular facts. In addition, instructions were issued which stated that Regional Office personnel should not commence an on-site field investigation until all required information is provided and until the Regional office has received appropriate supporting evidence and documents. The General Counsel reaffirmed the requirement that when a case is received which is deficient in one of the areas outlined above, the filing party will be notified and a confirmation letter sent advising the filing party that the case will be dismissed unless the noted deficiencies are corrected. Case tracking procedures were modified during the fiscal year to track these "deficient" cases. In a change from previous practice, although docketed, these deficient cases are not counted for intake purposes until they are made sufficient. If the cases are dismissed or withdrawn prior to being made sufficient, then the dispositive actions are not counted nor are these cases counted for intake purposes. Experience during the fiscal year indicated that roughly 80 percent of all deficient charges were made sufficient. Roughly 7 percent of all new cases received in the Regions were deficient when received initially.

Case Tracking System

The Office of General Counsel expanded the capabilities of its case tracking system to include the issues associated with its unfair labor practice caseload. This expansion enabled the Office of the General Counsel to develop information on the predominant issues involving specific Federal agencies, specific activities, and labor organizations. Information is also available on the outcomes of cases involving certain issues, including the merit factor and voluntary settlement rates.

During the fiscal year, information was developed on the median case processing times, measured from the date of complaint to the date of actual hearing. This information enabled the Office of the General Counsel to identify specific instances where hearings may not have been held in a timely manner. These actions resulted in a sharp reduction in the time to hearing in some instances.

Compliance

During the fiscal year, emphasis was placed on the timely processing of compliance-related cases. During the fiscal year, the backlog of open compliance cases was sharply reduced. The tracking of compliance cases was improved to ensure that compliance was achieved in as timely a manner as possible.

Case Transfers

As in the past, the Office of the General Counsel continued to review the pattern of its intake and to transfer resources to ensure the most timely processing of its caseload. In conjunction with this review, the field office in Honolulu, Hawaii, was closed and the jurisdiction transferred from the Los Angeles Region to the San Francisco Region. The closing of this field location resulted in a savings to the Office of the General Counsel with no loss in the timely processing of its caseload. In an effort to balance its intake with available resources, three other jurisdictional shifts were made or continued during the fiscal year—

1) the Puerto Rican jurisdiction was returned to the New York Region;

2) the North and South Dakota jurisdictions were transferred from the Denver Region to the Chicago Region; and

3) the southern Virginian jurisdiction continued to be assigned to the Washington Region.

Timely Processing

During the fiscal year, the Office of the General Counsel continued many of the management initiatives which had been taken in the past. The 75-day time target was continued throughout the fiscal year for the ULP caseload. Only 26 unblocked ULP charges were pending for more than 75 days at the end of the fiscal year. The time target for the representation caseload remained at a level of 55 days, and only one unblocked petition was pending for more than 55 days

at the end of the fiscal year. The Office of the General Counsel established other time targets during the fiscal year—

1) 30 days from the notice of hearing to scheduled hearing in a representation petition;
2) 60 days from the issuance of ULP complaint to scheduled hearing;
3) 7 days from the notice of the appeal to transfer of the file from the Regional Office to the Office of the General Counsel; and
4) 90 days from the close of a representation case hearing to issuance of the Decision and Order.

As shown in the following sections, in general, the Office of the General Counsel remained within or improved upon its time targets in Fiscal Year 1985.

Public Information

The General Counsel continued to prepare its *Quarterly Report On Case Handling Developments*, which is used to provide the clientele with information on the General Counsel's disposition of significant issues which have been raised during the year.

Administration

Finally, the Office of the General Counsel initiated two other programs which are projected to yield substantial financial savings. First, rental equipment (word processing and data processing) is being purchased at prices of optimum advantage to the Federal Government. Initial experience indicates that the savings of this program will exceed $150,000 on an annual basis. Second, space requirements of the Regional Offices are being reexamined. When existing leases expire, reduced space allocations are being requested. Based on experience to date, it is estimated that the savings from this program will exceed $110,000 on an annual basis.

Caseload

Total Caseload

During FY 1985, the Office of the General Counsel case receipts increased, as did the dispositive actions taken. Moreover, because dispositive actions exceeded intake for both ULP and representation actions, fewer cases were pending without dispositive action at the end of the fiscal year than in any prior fiscal year. Improvements were seen in all median timeframes for the processing of various workloads within the Office of the General Counsel. Finally, more cases were processed within 75 days of the date of filing to disposition than was previously experienced during the Office's 6 year history.

The dispositive actions followed patterns seen in previous fiscal years. Thus, percentage of unfair labor practice charges found to have merit remained relatively stable while the voluntary settlement rate increased. The total settlement rate for Fiscal Year 1985, 93.5 percent, was the highest ever for the Office of the General Counsel and reflected very high levels of both pre-complaint and post-complaint settlements.

New Cases Received

A total of 5,696 cases were received in Fiscal Year 1985. This total was 113 cases, 2 percent, above the comparable total for Fiscal Year 1984. Excluded from the intake count in FY 1985 were 54 deficient cases which were not made sufficient by the end of the fiscal year. The relatively small fluctuation in intake from FY 1984 to FY 1985 continued a trend seen in FY 1984, in contrast to earlier years when marked fluctuations in intake were seen.

Summarized in the table below are the intake totals for the Office of the General Counsel for the last 6 years:

FY 1980—5,570 new cases
FY 1981—6,918 new cases— +1,348 cases = +24.2%
FY 1982—5,248 new cases— −1,670 cases = −24.1%
FY 1983—5,710 new cases— + 462 cases = + 8.8%
FY 1984—5,583 new cases— − 127 cases = − 2.2%
FY 1985—5,696 new cases— + 113 cases = + 2.0%

For the distribution of intake on a monthly basis (by Region, type of case and jurisdiction) see Appendix 1, Table 1.

The total of 5,696 new cases received in FY 1985 included 5,349 unfair labor practice (ULP) charges and 347 representation petitions. These ULP cases comprised 93.9 percent of the total intake for the fiscal year, while the representation case intake equalled 6.1 percent of the total intake. The factor for representation case intake was roughly 1 percentage point below the comparable factor for FY 1984 and was the smallest factor ever for the Office of the General Counsel. In contrast, the ULP intake increased by 170 cases, 3.3 percent, in FY 1985 and was the third largest total ever received.

Dispositive Actions Taken

A total of 5,781 dispositive actions* were taken during the fiscal year. This total exceeded the comparable intake by 85 cases, 1.5 percent and was 191 cases above the comparable total of a year ago, an increase of 3.4 percent. As seen in Appendix 1, Table 2, the number of dispositive actions has remained relatively stable during the last 4 fiscal years, 1982 through 1985, after fluctuating sharply in the first 2 years following enactment of the Statute.

In addition to dispositive actions taken during the fiscal year, the Office of General Counsel took numerous secondary dispositions in processing its caseload.

1) A total of 709 complaint dispositions were taken during the fiscal year. This total included 570 complaints where voluntary settlements were obtained. Although this total markedly exceeded the total of 642 complaints issued during the fiscal year, it was 93 cases below the comparable total of a year ago. The decrease in complaint dispositions reflected the high level of the pre-complaint settlement rate during FY 1985 and the reduced number of pending complaints at the beginning of the fiscal year. By the end of the fiscal year, fewer complaints were pending without disposition than ever before in the experience of the Office of the General Counsel.

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*Dispositive actions include the following: (1) dismissals of representation petitions and unfair labor practice (ULP) charges, (2) approvals of withdrawals for either representation petitions or ULP charges, (3) issuance of a ULP complaint or a notice of hearing in a representation petition, (4) approval of consent election agreement in a representation petition or of a voluntary settlement in a ULP charge, and (5) issuance of a Decision and Order in a representation petition.

2) A total of 504 appeal dispositions were taken during the fiscal year, essentially equal to the total of 508 appeals received during the same period. A low level of pending appeals was sustained throughout the fiscal year.

3) Compliance was initiated in 568 cases, while a total of 588 cases were closed on compliance-related activity. As a result, by the end of the fiscal year, fewer cases were open on compliance-related activity than in any previous fiscal year.

4) Elections were held in 87 representation petitions during the fiscal year. This total was 21 cases below the comparable total for FY 1984, a decrease of 19.4 percent, and was the smallest number of elections conducted in the history of the Office of the General Counsel.

5) Hearings were held in 48 representation petitions during the fiscal year. This total essentially equalled comparable totals for the previous 2 fiscal years. Experience in FY 1985 indicated that hearings were held in roughly one-third of all petitions where notices of hearings were issued.

6) A total of 42 post-hearing Decisions and Orders were issued in FY 1985, the first full year under the delegation of authority to the Regional Offices. No backlog of representation case Decisions and Orders existed at the end of the fiscal year.

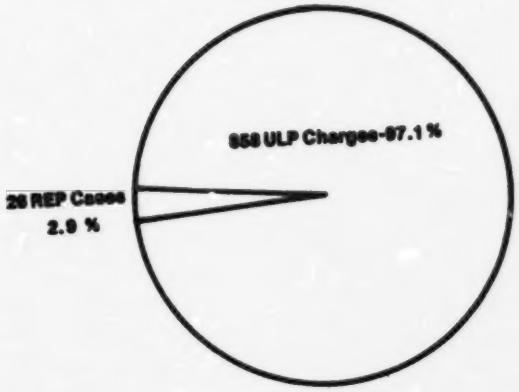
Status of Pending Cases

The Office of the General Counsel sustained the low level of its pending caseload throughout FY 1985. In many workload areas, the pending caseloads were reduced. The total of 884 cases pending without dispositive action was the smallest end-of-year total ever for the Office of the General Counsel. Similar to the pattern of pending cases seen in FY 1984, in only 2 months of the fiscal year were more than 1,000 cases pending without dispositive action (December 1984 and May 1985). In the last 4 months of the fiscal year, at most, 929 cases were pending without dispositive action.

The total of 884 pending cases included 858 ULP charges and 26 representation petitions. Both the ULP and representation pending case totals were the smallest ever for their respective workloads. Dispositive action was taken in roughly 7 out of every 8 cases pending without dispositive action at some point during the fiscal year. This factor was the best ever for the Office of the General Counsel.

Summarized below is the distribution of the end-of-year pending caseload.

FY 1985 Pending Caseload*
Total - 884 Cases



**Cases Pending Without Dispositive Action, End-Of-Year*

Summarized in Appendix 1, Table 3, is a history of the pending caseload at the end of each fiscal year, beginning with FY 1979. The Office of the General Counsel reduced its total pending caseload in each of the last 4 years.

In addition to reducing its cases pending without dispositve action, during FY 1985 the Office of the General Counsel reduced the pending cases in several of its secondary workload areas.

1) At the beginning of the fiscal year, 201 ULP complaints were pending without disposition. At the end of FY1985, only 98 complaints were pending without disposition.

2) At the beginning of the fiscal year, 79 ULP cases were pending on appeal. At the end of the fiscal year, 83 cases were pending in the Office of Appeals. This total included seven cases where partial dismissals had been appealed. Fiscal Year 1985 was only the second year in which fewer than 100 cases were pending on appeal at the end of the fiscal year.

3) A total of 195 cases were open on compliance-related activity at the end of the fiscal year. This total was 20 cases below the total of open compliance cases carried into the fiscal year, and was the smallest ever for the Office of the General Counsel.

4) At the beginning of the fiscal year, elections or hearings were pending in 40 representation petitions. At the end of the fiscal year, hearings or elections were pending in only 28 cases—the smallest total ever.

Unfair Labor Practice Charges Caseload

Charges that labor organizations or Federal agencies have committed unfair labor practices in violation of the Federal Service Labor-Management Relations Statute and of the Foreign Service Act are filed with the Office of the General Counsel by individuals, labor organizations or Federal agencies.

Of the 5,349 ULP charges received in FY 1985, 5,079 (90%) involved allegations against Federal agencies ("CA" charges). The "CA" intake was 188 cases above the comparable total for FY 1984, an increase of 3.8 percent, and the third highest "CA" intake ever for the Office of the General Counsel. Also included in the total of 5,349 ULP charges were 270 charges filed against labor organizations ("CO" charges), a decrease of 18 cases or 6.3 percent.

The FY 1985 and historic distribution of the ULP intake is summarized in Appendix 1, Table 4.

Unfair labor practice charges could, and often did, involve more than one issue. In FY 1985, however, the bulk of all charges involved four issues: (1) Interference, Restraint or Coercion by Agency, (2) Failure to Bargain - Unilateral Changes, (3) Discrimination, and (4) Bad Faith Bargaining.

ULP Dispositive Actions

The total of 5,407 dispositive actions taken on ULP charges in FY 1985 essentially equalled the ULP intake for the fiscal year and was 216 cases above the comparable total for FY 1984.

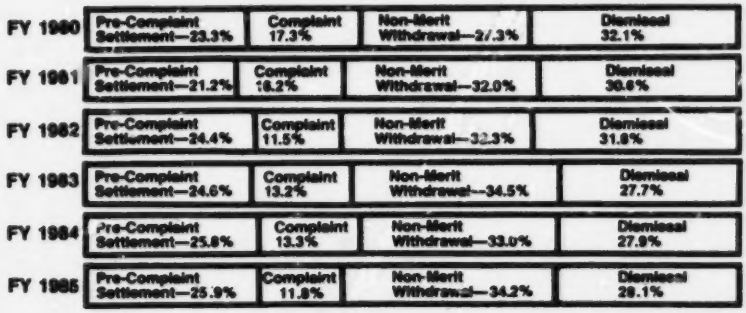
Summarized in Appendix 1, Table 5, is a distribution of the ULP dispositive actions taken in FY 1985.

As reflected in Appendix 1, Table 6, the increase in dispositive actions was concentrated in dismissals and non-merit withdrawals. A

decrease in the number of complaints was offset by an increase in informal pre-complaint settlements.

Summarized in the table below is a percentage distribution of ULP dispositive actions from FY 1980 through FY 1985; the dismissal and pre-complaint settlement percentages have remained relatively stable in the last 3 years.

Percentage Distribution of ULP Dispositive Actions



Characteristics of ULP Dispositive Actions

With respect to the unfair labor practice caseload, two concepts are important—merit factor and voluntary settlement rate. The merit factor is a percentage indicator of all cases determined to have merit, based on the number of cases filed. Three voluntary settlement rates are used by the Office of the General Counsel:

1) Pre-Complaint Settlement Rate—the percentage of the merit caseload where voluntary settlement is obtained prior to the issuance of complaint;

2) Post-Complaint Settlement Rate—the percentage of the complaints where voluntary settlement is obtained; and

3) Total Settlement Rate—the percentage of the merit caseload where voluntary settlement is obtained; a combination of the pre-complaint and post-complaint settlement rates.

The merit factor for FY 1985 was 37.7 percent. This factor was slightly lower than the factor for the previous fiscal year, 39.1 percent. Summarized in the table below are the merit factors for the Office of the General Counsel for the last 6 fiscal years:

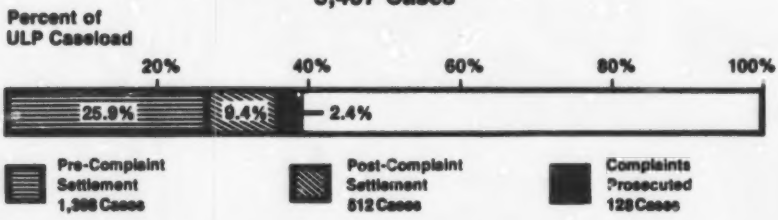
FY 1980—40.6%
FY 1981—37.4%
FY 1982—35.9%
FY 1983—37.8%
FY 1984—39.1%
FY 1985—37.7%

As shown in the table above, despite fluctuations in dispositive actions, the merit factor for the Office of the General Counsel remained relatively stable. This factor remained higher than the comparable factor for the private sector.

Of the 5,407 ULP charges with dispositive action in FY 1985, 2,038 were determined to have merit. Although ULP dispositive actions in total increased by 216 cases in FY 1985, the total of 2,038 cases determined to have merit in FY 1985 essentially equalled the comparable total in FY 1984, 2,032 cases.

Summarized in the chart below is a percentage distribution of the ULP dispositive actions in FY 1985. This chart shows the merit factor, the percentage of all cases involved in pre-complaint settlement, the percentage of cases which involved issuance of complaint and post-complaint settlement, and the percentage of cases which involved merit and had to be sent to the Authority for final decision.

Unfair Labor Practice Caseload—Merit Factor
Fiscal Year 1985—37.7%
5,407 Cases

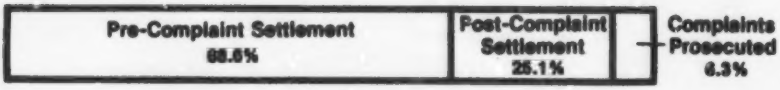


Of all ULP cases with dispositive action, 25.9% involved merit cases in which voluntary settlement was obtained prior to the issuance of complaint. In 9.4% of all ULP cases, complaint was issued and voluntary settlement was obtained prior to hearing. In only 2.4% of all ULP cases, complaints were issues which involved prosecution.

Only 2.4 percent of all ULP cases had to be transferred to the Authority for final decision in FY 1985. This factor was the smallest ever for the Office of the General Counsel, and reflected the impact of the increase in the total settlement rate.

The total settlement rate for the Office of the General Counsel was 93.7 percent in FY 1985. This factor was its highest ever and was roughly 3 percentage points above the comparable factor for FY 1984. The total settlement rate for the Office of the General Counsel followed a long-term increasing trend, rising in five of the past 6 years. The table below reflects the pattern of dispositions taken on the merit caseload.

Merit Caseload Disposition
Fiscal Year 1985



Total Settlement Rate—93.7%

Of all unfair labor practice charges with merit, 68.6% were settled prior to the issuance of complaint. Voluntary settlement was also obtained, subsequent to the issuance of complaint, in 25.1% of all merit cases. Only 6.3% of all merit cases had to be referred to the Authority for final decision.

Summarized in Appendix 1, Table 7, is the percentage distribution of the dispositions for the total merit caseload. It reflects the increasing percentage of cases where voluntary settlement is obtained prior to the issuance of complaint, and the decreasing percentage of merit cases where voluntary settlement cannot be obtained—6.3 percent in FY 1985.

In FY 1985, voluntary pre-complaint settlement was obtained in 68.6 percent of all cases determined to have merit. This percentage factor was the highest ever for the Office of the General Counsel. This high level of the pre-complaint settlement was sustained for the fourth consecutive year, with factors ranging between 65 percent and 68.6 percent. Of the 2,038 ULP charges in FY 1985 determined to have merit, voluntary settlement was obtained in 1,398 cases prior to complaint.

The post-complaint settlement rate for the Office of the General Counsel was 80 percent in FY 1985. This factor was also the highest ever.

During FY 1985, the Office of Administrative Law Judges issued 138 recommended decisions involving 160 complaints. The "win factor" for the Office of the General Counsel (the percentage of complaints where violations were found when efforts at voluntary settlement were unsuccessful) was 67.5 percent. This factor was the highest ever for the Office of the General Counsel.

Combining the win factor for the Office of the General Counsel with its total settlement rate indicated that once initial determination of merit was made in the Regional Offices, some form of adjustment was made in 98 percent of all cases (either through voluntary settlement or through the hearing and decision process). This factor was the highest ever for the Office of the General Counsel. In the past, this factor was between 95.5 percent and 96.5 percent.

Compliance

Compliance was initiated in 568 cases in FY 1985. Voluntary settlements were involved in roughly two-thirds of these cases.

A total of 588 cases were closed on compliance during the fiscal year, and at the end of the fiscal year, only 195 compliance-related cases were open. Fewer cases were open on compliance-related activity at the end of FY 1985 than in any previous fiscal year.

Median Age Factors

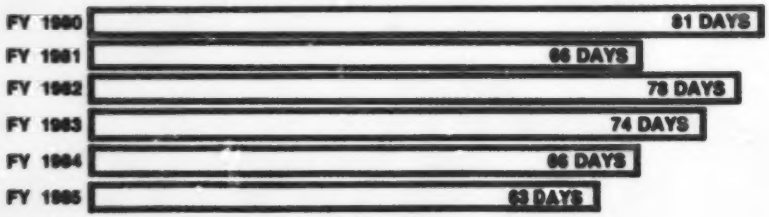
In addition to stressing the importance of a high settlement rate, the Office of the General Counsel stresses the concept of reasonable expedition in the processing of its cases. Experience has shown that increases in the voluntary settlement rates for the Office of the General Counsel are seen in conjunction with improvements in the median age factors which monitor case processing activity.

Of the 5,407 ULP dispositive actions taken in FY 1985, 3,675, or 68 percent, were taken within 75 days of the date of filing. Further, only 214 cases, 4 percent of all dispositive actions, required more than 4 months from filing to dispositive action. This factor was the

smallest ever. The median age factor for the ULP dispositive actions, measured from the date of filing to dispositive action was reduced to a level of 63 days. As shown in the table below, improvements were seen in this factor in each of the last 3 years and in 4 of the last 5 years.

ULP Median Processing Time

Dispositive Actions—Unfair Labor Practice Charges



Hearings were scheduled in 634 ULP complaints during FY 1985. In roughly 90 percent of these complaints the hearings were scheduled within 75 days of complaint issuance. The median age factor for these ULP charges, measured from complaint issuance to scheduled hearing, was 47 days. This factor was the lowest ever for the Office of the General Counsel.

A total of 142 ULP complaints were involved in hearings, motions for summary judgment or stipulations to the Authority during FY 1985. The median age factor for these charges, measured from complaint issuance to hearing or stipulation was 64 days.

The median age factor for the 640 complaints issued during FY 1985, measured from the date of filing to complaint issuance, was 83 days. This factor was 20 days higher than the factor for all ULP dispositive actions, which reflected the preparation time required for complaint issuance and the settlement attempts of the Regions made prior to complaint issuance.

Pending ULP Charges

At the end of the fiscal year, 858 unfair labor practice charges were pending without dispositive action. This total was the smallest ever for the Office of the General Counsel. The median age factor for

the ULP caseload pending without dispositive action was 27 days, comparable to the factor for FY 1984.

A total of 83 ULP appeals were pending without disposition at the end of the fiscal year. The median age factor for the pending appeals caseload, measured from receipt of the appeal, equalled 27 days. More than half of all pending appeals were received in the last month of the fiscal year.

Appeals Caseload

In FY 1985, 62.3 percent of all unfair labor practice charges were found to be without merit. In those cases where the Regional Office determines that charges alleging unfair labor practices do not have merit, attempts are made to obtain voluntary withdrawal of the charge prior to the issuance of a dismissal letter by the Regional Director. Continuing a pattern seen in previous fiscal years, the number of withdrawals in FY 1985 sharply exceeded the number of dismissals—1,847 non-merit withdrawals compared to 1,522 dismissals.

When a Regional Director, on behalf of the General Counsel, refuses to issue complaint, a charging party may request that the General Counsel review the decision of the Regional Director. A charging party may also request the General Counsel to review a Regional Director's approval of a unilateral settlement agreement.

Roughly 1 ULP charge in every 12 was appealed to the Office of the General Counsel during FY 1985, equivalent to roughly 1 non-merit dispositive action in every seven. During the fiscal year, the refusal of the Regional Director to issue complaint was appealed in 13.3 percent of all cases determined to be without merit. Both percentage factors were the lowest ever for the Office of the General Counsel, and fell slightly below comparable factors seen in the 3 previous fiscal years. In total, only 8.3 percent of all ULP dispositive actions were appealed directly to the General Counsel, also the lowest factor ever for the Regional Offices.

In FY 1985, 508 appeals were received, the smallest number ever for the Office of the General Counsel. The intake of appeals dropped steadily during the 4-year period from FY 1982 through FY 1985, as reflected in Appendix 1, Table 8.

In FY 1984, the Office of the General Counsel eliminated its backlog of appeals. Moreover, during FY 1985, the Office of the General Counsel sustained the low level of its pending appeals

workload, and appeal dispositions kept pace with intake. A total of 504 appeal dispositions were taken during the fiscal year. This total was 122 cases below the comparable total of a year ago, a decrease of 19.5 percent. The reduced number of dispositions enabled the General Counsel to detail professional nonsupervisory staff to the Regional Offices to aid in the processing of unfair labor practice charges and representation petitions on an as-needed basis.

The total of 504 appeal dispositions included the following—408 cases in which the Regional Director was sustained, 11 cases where the appeals were dismissed because of the untimeliness of the filing, 8 appeals where the cases were remanded for further investigation, 1 appeal where the decision of the Regional Director was reversed, and 4 cases where the appeal was withdrawn prior to disposition. The table below compares appeal dispositions in FY 1985 with those in the previous fiscal year.

APPEAL DISPOSITION	FISCAL YEAR 1985	FISCAL YEAR 1984	CHANGE
Region Sustained	480 cases—95.2%	563 cases—90.0%	+ 83 cases
Untimely Appeal	11 cases— 2.2%	34 cases— 5.4%	+ 23 cases
Case Remanded	8 cases— 1.6%	14 cases— 2.2%	+ 6 cases
Region Reversed	1 case — 0.2%	9 cases— 1.4%	+ 8 cases
Appeal Withdrawn	4 cases— 0.8%	6 cases— 1.0%	+ 2 cases
Total Appeal Disposition	504 cases—100.0%	626 cases—100.0%	+122 cases

The percentage factor for Regional sustentions, 95 percent, was the highest ever for the Office of the General Counsel. The percentage factors for cases reversed and remanded, 0.2 percent and 1.6 percent respectively, were the smallest ever for the Office of the General Counsel.

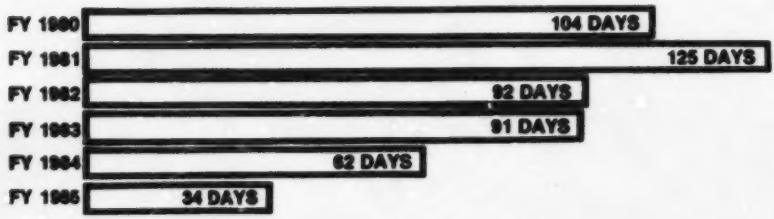
Excluding withdrawals, recissions and dismissals because of the untimeliness of the filing of the appeal, the refusal of the Regional Director to issue complaint was sustained in 98 percent of all cases. This factor was the highest ever for the Office of the General Counsel, and was roughly 2 percentage points above the comparable factor for FY 1984, 96 percent. This factor increased sharply for the second consecutive year, and was 6.5 percentage points above the comparable factor for FY 1983.

The median age factor for appeal dispositions improved markedly for the second consecutive year, being reduced by 28 days to 34 days.

This factor was the best ever for the Office of the General Counsel, and was 57 days better than the comparable factor to FY 1983, 91 days (an improvement of 62.5%).

Summarized in the table below is a history of the median age factors for the appeals workload for FY 1980 through FY 1985, evidencing sharp decreases in FY 1984 and FY 1985.

ULP Appeal Median Processing Times*



* *Measured From Receipt of Appeal to Disposition*

Of the 504 appeal dispositions taken in FY 1985, 424 were taken within 60 days of receipt of the appeal. This total equaled 84 percent of all appeal dispositions, the highest percentage factor ever for the Office of the General Counsel.

Representation Petitions Caseload

Representation petitions are filed in the Regional Offices by employees of the Federal Government, labor organizations and Federal agencies. After the petitions are filed, investigations are conducted. Initially, disposition of representation petitions can result in the approval of a consent election agreement, the issuance of a notice of hearing, the issuance of a Decision and Order, the withdrawal of a petition, or the dismissal of a petition. After the initial dispositive action is taken on a petition, additional actions may be taken if appropriate. These "secondary" actions include holding an election or hearing, and issuing a Decision and Order after hearing.

A total of 347 representation petitions were received during FY 1985.

For the second consecutive year, petitions for clarification of existing units (CU cases) exceeded petitions for exclusive recognition (RO

cases). These two types of petitions each accounted for roughly one-third of the total representation intake.

As reflected in Appendix 1, Table 9, the number of petitions seeking exclusive recognition dropped steadily in each year of experience. The total of 118 " RO" petitions received in FY 1985 was the smallest ever for the Office of the General Counsel. The intake of "CU" petitions fluctuated in recent years. Despite the sharp drop in intake in FY 1985, the total of 126 "CU" petitions was the second highest total in the last 4 years.

Dispositive Actions

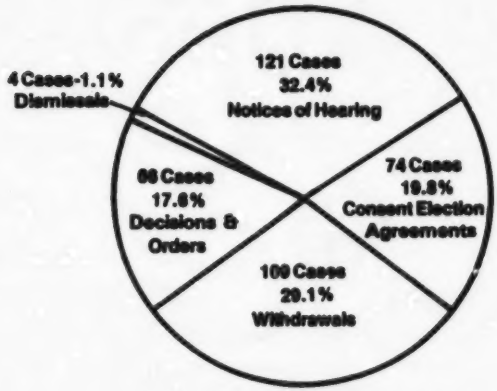
A total of 374 dispositive action were taken on representation petitions during the fiscal year. Although this total was 25 cases below the comparable total of a year ago, it exceeded intake in FY 1985 by 27 cases, or roughly 8 percent.

Summarized in the table below is the distribution of the 347 dispositive actions, compared with the comparable totals from FY 1984.

DISPOSITIVE ACTIONS	FISCAL YEAR 1985	FISCAL YEAR 1984	CHANGE
Notice of Hearing	121 cases—32.4%	112 cases—28.0%	+ 9 cases
Withdrawals	109 cases—29.1%	120 cases—30.1%	– 11 cases
Consent Election Agreements	74 cases—19.8%	89 cases—22.3%	– 15 cases
Decisions & Orders	66 cases—17.6%	75 cases—18.8%	– 9 cases
Dismissals	4 cases— 1.1%	3 cases— 0.8%	+ 1 case
Total Dispositive Actions	374 cases—100.0%	399 cases—100.0%	– 25 cases

The decrease in consent election agreements in FY 1985 reflected the impact of the decrease in petitions for exclusive recognition and Agency petitions raising questions concerning representation. The sustained level of notices of hearing reflected the sustained high level of petitions for clarification of existing units. For the first time in the history of the Office of the General Counsel, notices of hearing exceeded withdrawals of petitions. For only the second year did notices of hearing exceed consent election agreements. Continuing trends seen in the past, only four representation petitions were dismissed during the fiscal year. Traditionally, only a small percentage of representation petitions are dismissed.

Dispositive Actions Taken on the Representation Caseload



Fiscal Year 1985 - 374 Cases

Hearings

Hearings were held in 48 representation petitions in FY 1985. Experience indicates that hearings are actually held in roughly one-third of all petitions where notices of hearings are issued. In the remaining cases, the issues in question are resolved prior to actually conducting a hearing.

Fiscal Year 1985 was the first full year of experience under the delegation to the Regional Offices to issue Decisions and Orders in representation petitions, and 42 posthearing Decisions and Orders were issued. At the end of the fiscal year, three post-hearing Decisions and Orders were pending in the Regions, involving a total of six petitions.

Elections

Elections were held in 87 representation petitions in FY 1985, 21 cases below the comparable total of a year ago and the smallest ever for the Office of the General Counsel. Included in the 87 elections were seven which involved petitions for decertification of nonprofes-

sional units. In two of these elections, the certification of the exclusive representative was withdrawn. Five of the 87 elections involved petitions for unit consolidation and in all 5 elections, the units were consolidated. A total of 75 elections involved petitions for exclusive recognition, 25 cases below the comparable total of a year ago.

Median Age Factors

The three median age factors for the representation caseload all reached their best levels ever in FY 1985.

The factor for representation case dispositive actions, measured from the date of filing, dropped by 4.5 days to 49 days. This factor has shown steady improvement in the last 6 years.

The median age factor for scheduled hearings, measured from the notice of hearing to scheduled hearing, was reduced by 7 days to 36 days.

The median age factor for posthearing Decisions and Orders, measured from the close of the hearing, was reduced by 9 days to 73 days. This factor was nearly 3 weeks better than the time target established by the General Counsel.

Pending Cases

A total of 26 representation petitions were pending without dispositive action at the end of the fiscal year. This total was the smallest ever for the Office of the General Counsel, and was less than half the pending caseload at the beginning of the fiscal year. The median age factor for the pending representation petitions was 18 days, 1 week better than the factor of 25 days carried into the fiscal year.

In addition to the 26 petitions pending without dispositive action, elections were pending in 7 cases at the end of the fiscal year. In all 7 cases the consent election agreements were approved within the last 2 months of the fiscal year.

PART III
The Federal Service Impasses Panel

The role of the Federal Service Impasses Panel (the Panel) is to provide assistance to Federal agencies and Unions representing Federal employees in resolving impasses arising from negotiations over conditions of employment. If bargaining between the parties and mediation assistance from the Federal Mediation and Conciliation Service (FMCS) prove unsuccessful, the Panel, as an entity within the Authority, has authority under section 7119 of the Federal Service Labor-Management Relations Statute (the Statute) to recommend procedures, such as arbitration, for the resolution of an impasse. It also provides direct assistance to the parties through factfinding, written submissions, or other methods it deems appropriate. If these efforts do not lead to a settlement, the Panel may take whatever action is necessary to resolve the impasse. Such final action, typically an arbitration award or a *Decision and Order* of the Panel itself, is binding on the parties during the term of their agreement unless they agree otherwise. If the parties to a negotiation impasse agree to adopt a procedure for using a private arbitrator, the procedure must be approved by the Panel.

The Panel also has jurisdiction to resolve disputes under the Federal Employees Flexible and Compressed Work Schedules Act of 1982 (the Compressed Work Schedules Act) where an agency refuses to establish a flexible or compressed work schedule or decides to terminate one. The Compressed Work Schedules Act requires the Panel to take final action in favor of the agency's decision if it is supported by evidence that the schedule has caused or is likely to cause an adverse agency impact. An adverse impact is defined in 5 U.S.C. §6131(b) as a reduction of the productivity of the agency, a diminished level of services furnished to the public by the agency, or an increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

Labor-management disputes involving the Panama Canal Commission and other U.S. Government agencies located in what was the Canal Zone of the Republic of Panama are also within the Panel's jurisdiction pursuant to the Panama Canal Act of 1979, 22 U.S.C. §3701. Such disputes may include foreign national employees. Finally, the Panel's staff supports the Foreign Service Impasse

Disputes Panel in resolving negotiation disputes arising under the Foreign Service Act of 1980.

The Statute provides that the Panel shall be composed of a Chairman and at least six other members who are appointed by the President from among individuals who are familiar with Government operations and knowledgeable in labor-management relations. Reappointed by the President on March 15, 1985, for 5 year terms were Thomas A. Farr, an attorney from Raleigh, North Carolina, and Jean T. McKelvey, a Cornell University professor and labor arbitrator from Rochester, New York. They join Chairman Roy M. Brewer, a labor consultant from Tarzana, California, and the other members: N. Victor Goodman, an attorney representing labor and management from Columbus, Ohio; Robert G. Howlett, a labor arbitrator and attorney from Grand Rapids, Michigan; Daniel H. Kruger, a professor of labor relations and labor arbitrator from East Lansing, Michigan; and Susan S. Robfogel, a management attorney from Rochester, New York; all of whom work for the Panel on a part-time basis. The Panel's office and small full-time staff are located in Washington, D.C.

The broad authority given to the Panel under the Statute permits it to use different dispute resolution techniques: mediation, fact-finding, Panel decisions based upon written submissions, and arbitration by Panel members and staff as well as by private arbitrators. The procedure selected by the Panel depends on the particular circumstances of the dispute and is always influenced by the Panel's interest in resolving the dispute as fairly and quickly as possible. In this regard the Panel, believing strongly that voluntary settlements are in the best interest of the parties and the public, chooses that process which will provide maximum opportunity for the negotiators to settle the matter informally on their own terms. The achievement of this objective is enhanced in a number of ways. One is the Panel's practice of sending the parties back to the bargaining table when it concludes that negotiation and mediation efforts have not been exhausted. Another is its unpredictability in the selection of a procedure for the resolution of a particular dispute. A third is encouraging the parties themselves to choose a procedure which is best suited to resolving the dispute. There follows a discussion of the case handling and related activities of the Panel during FY 1985.

Caseload

There were 47 cases pending before the Panel at the start of the fiscal year and it received 133 requests for assistance during the period (Appendix 2, Table 1). Of these cases, 125 requests were filed under the Statute; the others were made pursuant to the Compressed Work Schedules Act. Requests filed under the Foreign Service Act of 1980 are discussed in a separate section of this report.

Approximately 60 percent of the requests for Panel assistance arose from negotiations occurring during the term of an agreement, the others from end-of-contract bargaining. Many of the mid-term disputes concerned the impact and implementation of decisions made by agencies under the management-rights section of the Statute. Others resulted from substantive negotiations under reopener provisions or proposed changes in conditions of employment. Unions made 87 percent of the requests while employers filed 5 percent; the rest were joint requests.

There were 147 cases closed during the fiscal year (Appendix 2, Table 2). They were processed in a median time of 82 days which is 36 days less than the comparable figure for the prior year. *Decisions and Orders* based upon submissions were issued in a median time of 5 months, a 1-month improvement over the year before.

Withdrawal requests, as in FY 1984, represented 40 percent of all case dispositions (Appendix 2, Table 3); almost one-half of these requests were submitted following settlements reached as a result of assistance by a member of the Panel or its staff. Settlements took place at various stages of the Panel's procedures including the investigation, the prehearing conference, following receipt of a fact-finder's recommendations for settlement, after the parties met with a staff member to clarify written submissions, and during "med-arb" sessions conducted by a member of the Panel or its staff. Other cases were withdrawn because negotiability appeals or unfair labor practice charges had been filed.

A determination by the Panel to decline to assert jurisdiction (43) represented 29 percent of case dispositions, a decrease from the previous fiscal year when 35 percent of all cases were closed on this basis. Approximately one-half of the declinations involved threshold questions concerning the obligation of the parties, usually the employer, to bargain (22). In the others, the Panel declined to assert jurisdiction because the parties had not exhausted voluntary efforts to resolve the dispute through bilateral negotiations or mediation

assistance (16), or for other reasons such as a question concerning representation.

The Panel issued 30 *Decisions and Orders* during FY 1985 (20 percent of all case closings)—a decrease from the FY 1984 total of 46 and the lowest number since FY 1982. All but three of the *Decisions and Orders* were based upon written submissions from the parties. Two of those followed factfinding hearings and the other was preceded by an informal conference between a Panel representative and the parties.

Arbitrators' Opinions and Decisions were issued by members of the Panel or its staff after "med-arb" proceedings (where the arbitrator is authorized to mediate prior to issuing a binding decision) in four cases (3 percent of cases closed); however, the Panel's recommendation or direction that the parties use an outside arbitrator—at their own expense—under either conventional or "med-arb" procedures formed the basis for closing another nine cases. This constitutes 6 percent of all closed cases and reflects the Panel's continued use of this method of impasse resolution. Finally, the Panel approved the parties' requests in two disputes to use private arbitrators.

Procedures Used To Resolve Impasses

Brief examples follow of how these various procedures were used by the Panel to resolve impasses.

Decision and Order Following Factfinding.

An issue concerning merit promotion was at impasse in *New Jersey Department of Defense*, Panel Release No. 231. The employer filed the request for Panel assistance and a factfinding hearing was conducted. Following the employer's rejection of the factfinder's recommendation for settlement, the Panel issued a *Decision and Order* directing the parties to adopt the recommendation which concerned the number of qualified applicants and convening of a merit-promotion panel.

Decision and Order Following Written Submissions (Final-Offer Selection).

Following investigation of the union's request for assistance in *Department of Health and Human Services, Health Care Financing Administration*, Panel Release No. 231, the Panel directed the parties to make written submissions. It stated that it would select either party's package of proposals, in its entirety, as the basis for a decision to resolve issues relating to appropriate arrangements for employees adversely affected by the employer's determination to install modular system furniture in the Office of Research and Development. The parties' proposals covered health and safety, fire and safety, employee relocation, smoking in the workplace, and location of office equipment and lighting. After considering the submissions, the Panel issued a *Decison and Order* in which it adopted the employer's proposals.

Arbitrator's Decision Following "Med-Arb" Procedure.

In *Panama Canal Commission*, Panel Release No. 233, the Panel directed Member Howlett to engage in "med-arb" to resolve all outstanding issues. As a result of his mediation efforts, most issues were resolved informally. A few, however, concerning official time, adverse actions and assignment procedures necessitated a formal hearing and an *Arbitrator's Opinions and Decisions* for their resolution.

Direction of "Med-Arb" Following Rejection of Prior Panel Recommendation.

After extensive mediation assistance from the FMCS, the Panel recommended in *Department of Health and Human Services, Office of the Secretary*, Case No. 85 FSIP 23, that the parties submit numerous issues remaining in dispute to an arbitrator of their choice for "med-arb." The arbitrator's fees and related costs of the proceeding were to be shared by the parties. The union accepted the recommendation, but the employer did not. After considering the response to the recommendation, the Panel ordered the parties to use the previously recommended procedure.

Resumption of Negotiations Followed by Arbitration.

Approximately 17 articles were in dispute in *Department of Health and Human Services, Region III*, Case No. 85 FSIP 42. After inves-

tigation of the union-filed request for assistance, the Panel determined that the parties should resume negotiations with assistance from FMCS. They were also informed that any issues remaining after the conclusion of mediation efforts would be directed to arbitration under procedures to be determined at that time. Subsequently, the parties resumed negotiations but few issues were resolved. The Panel then directed them to submit all outstanding issues to a private arbitrator for "med-arb" on a cost-sharing basis.

Decision and Order Following Informal Meeting.

After investigating the union's request for assistance in *Defense Mapping Agency, Hydrographic/Topographic Center*, Panel Release No. 234, the Panel directed the parties to meet informally with a Panel representative to clarify and resolve the issue of official time for union representation. The representative was authorized to make a recommendation to the Panel if the issue remained unresolved. The Panel considered the results of the informal meeting, including the representative's recommendation, and rendered a decision adopting the employer's proposal.

Settlement Reached During Informal Meeting.

A dispute arose in the context of impact-and-implementation negotiations in *Department of the Navy, Naval Weapons Station*, Case No. 85 FSIP 13. At impasse were issues associated with a Department of Defense instruction on "drunk and drugged driving." The Panel directed the parties to meet with Chairman Brewer in an informal conference for the purpose of resolving all outstanding issues. With the Chairman's assistance, the parties reached a voluntary agreement which obviated the need for further Panel intervention.

Settlement During "Med-Arb" Procedure.

End-of-contract negotiations eventually led to an impasse in *U.S. Army Armament Munitions and Chemical Command*, Case No. 85 FSIP 5, in which the union filed a request for Panel assistance after the parties failed to agree on approximately eight articles. They reached a voluntary settlement, however, after receiving mediation

assistance from the Executive Director whom the Panel had designated to mediate and, if necessary, arbitrate the dispute.

Recommendation of Arbitration.

Issues concerning disciplinary and adverse actions, absence and leave, and reduction in force resulted in an impasse in *Department of Defense, Department of Defense Dependents' Schools*, Case No. 85 FSIP 7. In view of the nature of the issues involved, as well as the parties' procedural preferences, the Panel recommended that they submit the dispute to an arbitrator of their choice for a final and binding decision with all costs to be shared. The recommendation was accepted.

Decline to Assert Jurisdiction.

A declination of jurisdiction by the Panel is usually based upon a finding that either (1) the parties have not exhausted voluntary efforts to reach agreement or (2) threshold questions exist concerning a party's obligation to bargain over a proposal. With regard to the former, the Panel's investigation into a request for assistance filed by the union in *Library of Congress*, Case No. 85 FSIP 16, revealed that there had been only five short bargaining sessions. Thus, the Panel concluded that voluntary efforts had not been exhausted and it declined to assert jurisdiction. The parties were notified that they should resume bargaining with assistance from FMCS as necessary. An example of the second type of declination is *Griffiss Air Force Base*, Case No. 85 FSIP 107, where a dispute arose after the union's members failed to ratify a negotiated agreement. Since the ground rules contained no provision for ratification, the employer asserted that it had no obligation to bargain over subsequent proposals made by the union concerning (1) union activities, (2) employer-labor relations, (3) performance appraisal, (4) tours of duty, and (5) duration of the agreement. In view of these threshold questions concerning the employer's duty to negotiate, the Panel declined to assert jurisdiction until such time as the questions had been resolved in an appropriate forum.

Issues

Approximately 88 percent of the requests for assistance filed during FY 1985 contained five or fewer issues. Only 9 requests identified more than 10 issues in dispute; of these, 1 presented 23 unresolved articles.

The dominant issues before the Panel in FY 1985 were hours of work and overtime, grievance and arbitration procedures, health and safety, merit promotion, and performance appraisal (Appendix 2, Table 4). Others included official time for union representation, leave, ground rules for negotiations, and facilities and services.

Flexible and Compressed Work Schedules

There were eight requests filed pursuant to the Compressed Work Schedules Act during FY 1985; six cases were closed (one case carried over from the prior fiscal year and five filed during FY 1985). In the following cases, the Panel issued *Decisions and Orders* after having concluded that the findings on which the employer based its determination not to establish a compressed work schedule were not supported by evidence that implementation of the schedule would cause an adverse agency impact: *Department of the Army, Redstone Arsenal*, Panel Release No. 235; *Scott Air Force Base*, Panel Release No. 236; and *Department of Health and Human Services, Region II*, Panel Release No. 238. Accordingly, the Panel directed the parties to bargain over the union's proposal and noted that any ensuing impasse would be resolved pursuant to the Statute. In *Veterans Administration*, Panel Release No. 235, however, the employer met its statutory burden of proving adverse agency impact and, therefore, the Panel directed the union to withdraw its proposal.

Two cases were closed after the employer withdrew its assertion that a proposed work schedule would have an adverse impact (*Sacramento Air Logistics Command*, Case No. 85 FSIP 75 and *Social Security Administration*, Case No. 85 FSIP 4).

Compliance with Panel Decisions and Orders

Decisions by the Federal Labor Relations Authority.

Section 7116(a)(6) and (b)(6) of the Statute provides that it is an unfair labor practice for either party to "fail or refuse to cooperate in impasse procedures and impasse decisions." During the year, the Authority found that unfair labor practices had been committed by employers who refused to implement the Panel's decisions concerning medical examinations (*Army Corps of Engineers*, 16 FLRA 456 and hours of work, travel and temporary duty, and grooming standards (*Indiana Air National Guard*, 17 FLRA No. 11 (*Indiana*)). But issuance of a card for admission to a military club did not constitute noncompliance with the Panel's decision by the employer in *Department of the Air Force*, 17 FLRA 823. This was because the card was used merely to identify those persons eligible to eat at the club, regardless of membership, which was the issue at impasse.

Noncompliance, however, with a decision of the Panel does not, in and of itself, constitute a refusal to bargain under section 7116(a)(5) and (b)(5) since Congress set forth a separate unfair labor practice for failure to abide by the Panel's processes (*Minnesota Army National Guard*, 16 FLRA 561 (*Minnesota*)). Indicative of a refusal to bargain in good faith was management's failure to appear for factfinding which led to an *ex parte* hearing (*Internal Revenue Service*, 16 FLRA 904) and an employer's implementation of its explosive-safety order while related issues were pending before the Panel for resolution (*Bureau of Alcohol, Tobacco and Firearms*, 18 FLRA 466). With respect to the last case, the Authority also found a violation of section 7116(a)(6).

The Authority also decided that no unfair labor practice was committed by an employer who refused to implement a Panel decision which (1) incorporated matters enumerated in section 709(e) of the National Guard Technicians Act of 1968 within the scope of the grievance and arbitration procedures and (2) provided employees with an option of wearing the military uniform or standard civilian attire (*North Carolina Air National Guard*, 17 FLRA No. 37). Other Authority decisions involving Panel orders and the civilian-attire issue in which the same conclusion was reached were the *Indiana* and *Minnesota* cases, and *Tennessee National Guard*, 17 FLRA 1040.

The mere act by an agency head of reviewing a Panel-imposed provision under section 7114(c) does not violate section 7116(a)(1), (5), and (6) (*Department of the Army, Headquarters*, 17 FLRA 84). The agency head's disapproval is subject to review through the unfair labor practice procedures or a negotiability appeal. Where a labor organization refused to sign an agreement containing wording from a Panel decision, the Authority determined that this was a violation of section 7116(b)(5) and (6) (*Merchant Marine Academy*, 16 FLRA 318).

Actions Before the Courts.

The U.S. Court of Appeals for the First, Second, and Eleventh Circuits denied union petitions for review of the Authority's decisions that an employer's refusal to comply with the Panel's decision concerning the National Guard uniform issue was not an unfair labor practice because it involves a permissive subject of bargaining. (*Local 3013, American Federation of Government Employees, AFL-CIO, v. FLRA*, 762 F.2d 183 (1st Cir. 1985); *New York Council, Association of Civilian Technicians v. FLRA*, 757 F.2d 502 (2nd Cir. 1985), *petition for cert. filed*, 54 U.S.L.W. 3084 (U.S. July 18, 1985) (No. 85-106); and *Locals R5-91, R5-107, and R5-120, National Association of Government Employees v. FLRA*, 771 F.2d 1449 (11th Cir. 1985).) At the close of the fiscal year, the same issue was pending before the U.S. Courts of Appeals for the Seventh and Ninth Circuits.

In *American Federation of Government Employees, AFL-CIO, v. FLRA*, No. 84-1512, *petition for review filed* (D.C. Cir. October 12, 1984), the union seeks review of the Authority's *Interpretation and Guidance*, 15 FLRA No. 120, that an agency head may disapprove under section 7114(c) of the Statute wording in an agreement imposed by the Panel. Where an employer did disapprove of such wording, the union now seeks review of the FLRA's conclusion that it was not an unfair labor practice (*National Federation of Federal Employees v. FLRA*, No. 85-1260, *petition for review filed* (D.C. Cir. April 26, 1985)).

Participants in Panel Proceedings

The Departments of Health and Human Services and the Army were the Federal agencies most frequently appearing as one of the

parties in requests for assistance filed during FY 1985, (Appendix 2, Table 5). As in the prior year, these agencies, along with the Department of the Navy, were involved in almost one-half of all such requests. The Department of the Air Force and Veterans Administration were also involved in a signficant number of disputes before the Panel.

As has been the case since the Panel's inception, the American Federation of Government Employees, AFL-CIO (AFGE), was the labor organization involved most frequently in impasses referred to the Panel (Appendix 2, Table 6). Its councils and local unions appeared in over one-half (72) of all cases, usually as the filing party. The second, third, and fourth largest number of requests were filed by the National Federation of Federal Employees, National Treasury Employees Union, and National Association of Government Employees, respectively.

Training Assistance and Related Activities

Representatives of the Panel and its staff participated in several conferences, seminars, and training sessions sponsored by the Administrative Law Institute, American Arbitration Association, Association of Labor Relations Agencies, Federal Executive Board, Rocky Mountain Association of Federal Labor Relations Professionals, Society of Federal Labor Relations Professionals, and Society of Professionals in Dispute Resolution. Panel representatives also spoke at training sessions sponsored by the Federal Firefighters Association, National Federation of Federal Employees, the Departments of the Air Force, Navy, and Army. These efforts were undertaken to assist the parties in becoming more familiar with the Panel's objectives and procedures, and to develop better dispute resolution methods.

A Subject-Matter Index and Table of Cases covering cases closed in calendar year 1984 were published during the year.

The Foreign Service Impasse Disputes Panel

The Foreign Service Impasse Disputes Panel (Disputes Panel) assists in resolving impasses arising from collective bargaining under Chapter 10 of the Foreign Service Act of 1980, U.S.C. 4101 *et*

seq. (Foreign Service Act), over conditions of employment affecting Foreign Service personnel in the Department of State, United States Information Agency (USIA), the Agency for International Development (AID), and the Departments of Agriculture and Commerce. Two labor organizations are certified as representatives of Foreign Service employees: the American Foreign Service Association (AFSA) for employees of the Department of State and AID, and Local 1812, AFGE, for employees of USIA. Foreign Service employees of the Department of Agriculture and Commerce are currently unrepresented.

Section 1010 of the Foreign Service Act provides for the Chairperson of the Foreign Service Labor Relations Board to select individuals for the five-member Disputes Panel from among persons knowledgeable in labor-management relations or the conduct of foreign affairs. The Disputes Panel must be composed of two members of the Foreign Service, one member of the Federal Service Impasses Panel, one individual employed by the Department of Labor, and one public member who does not hold any other office or position in the Government. The staff of the Federal Service Impasses Panel provides support to the Disputes Panel which is chaired by Margery F. Gootnick, a labor arbitrator from Rochester, New York. She is the public member. The others are Rodney W. Johnson, of Arlington, Virginia, and Francis J. McNeil, of Kensington, Maryland, members of the Foreign Service; Robert G. Howlett, a labor arbitrator and attorney from Grand Rapids, Michigan, and a member of the Federal Service Impasses Panel; and Julius Balog, Jr., of Laurel, Maryland, an employee of the Department of Labor.

During the year, the Disputes Panel was requested to resolve one dispute which arose from negotiations between the Department of State and AFSA. Of the two cases closed, one involved a dispute carried over from the prior fiscal year. Both were withdrawn by the party requesting assistance.

In *USIA*, 84 FSIDP 3, Local 1812, AFGE, filed a request for assistance. The dispute focused on peer review of assignment panels and tour-of-duty committees. During the initial investigation of the request, the parties reached a voluntary settlement.

The other case was *Department of State*, 83 FSIDP 1, where the employer's request for assistance involved the issue of open assignments. Following mediation assistance by the Deputy Executive Director of the Panel, the parties resumed negotiations and arrived at a voluntary agreement.

PART IV
Appendix I

Table 1.—Case Intake

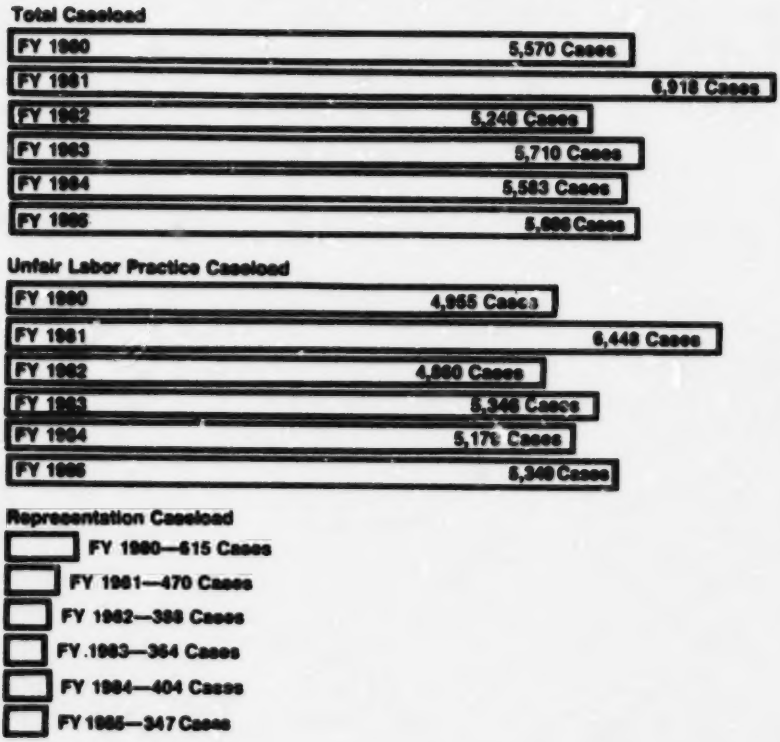
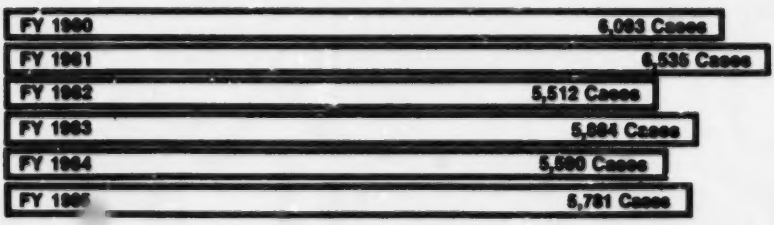
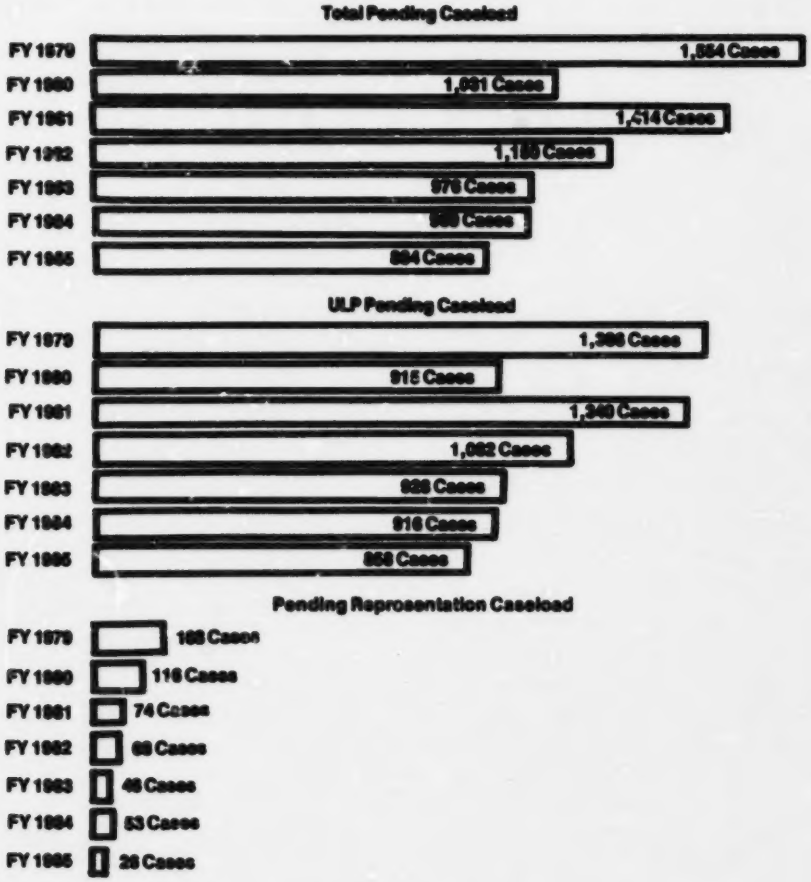


Table 2.—Total Dispositive Actions



Pending Caseload *



* Cases Pending With No Dispositive Action, End-of-Year

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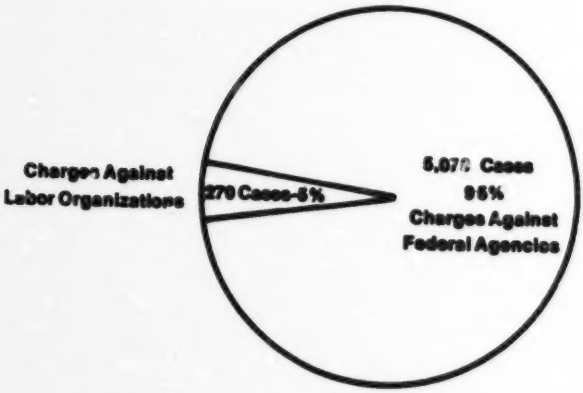
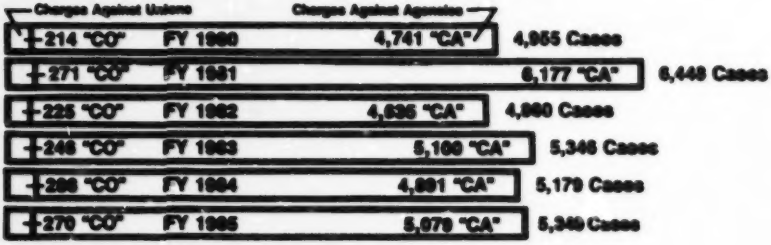
Table 4.—Unfair Labor Practice Intake - FY 1985
Total - 5,349 Cases



Distribution of ULP Case Intake


Charges Against Unions
Charges Against Agencies
214 "CO" FY 1980 4,741 "CA" 4,955 Cases
271 "CO" FY 1981 6,177 "CA" 6,448 Cases
225 "CO" FY 1982 4,696 "CA" 4,890 Cases
246 "CO" FY 1983 5,100 "CA" 5,346 Cases
289 "CO" FY 1984 4,891 "CA" 5,179 Cases
270 "CO" FY 1985 5,079 "CA" 5,349 Cases

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Percentage Distribution of ULP Case Intake

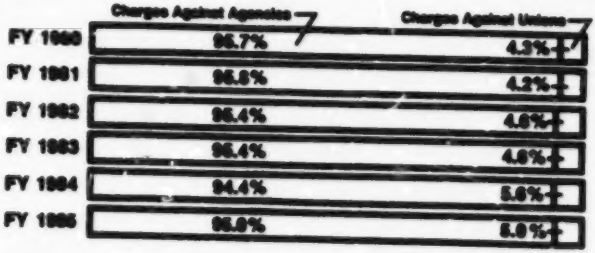
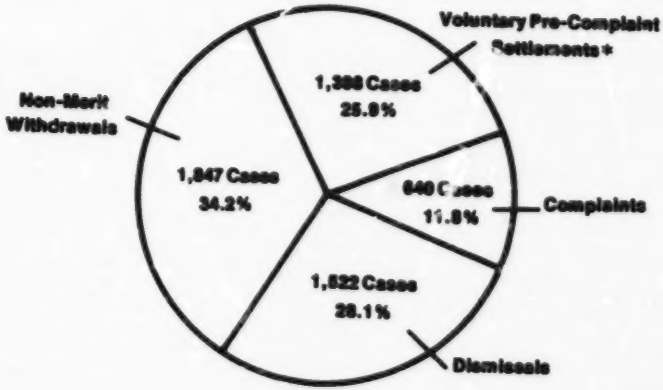


Table 5.—Distribution of ULP Dispositive Actions
Fiscal Year 1985 - 5,407 Cases



** Includes 1,303 Party Settlement Involving Withdrawals of the Charges*

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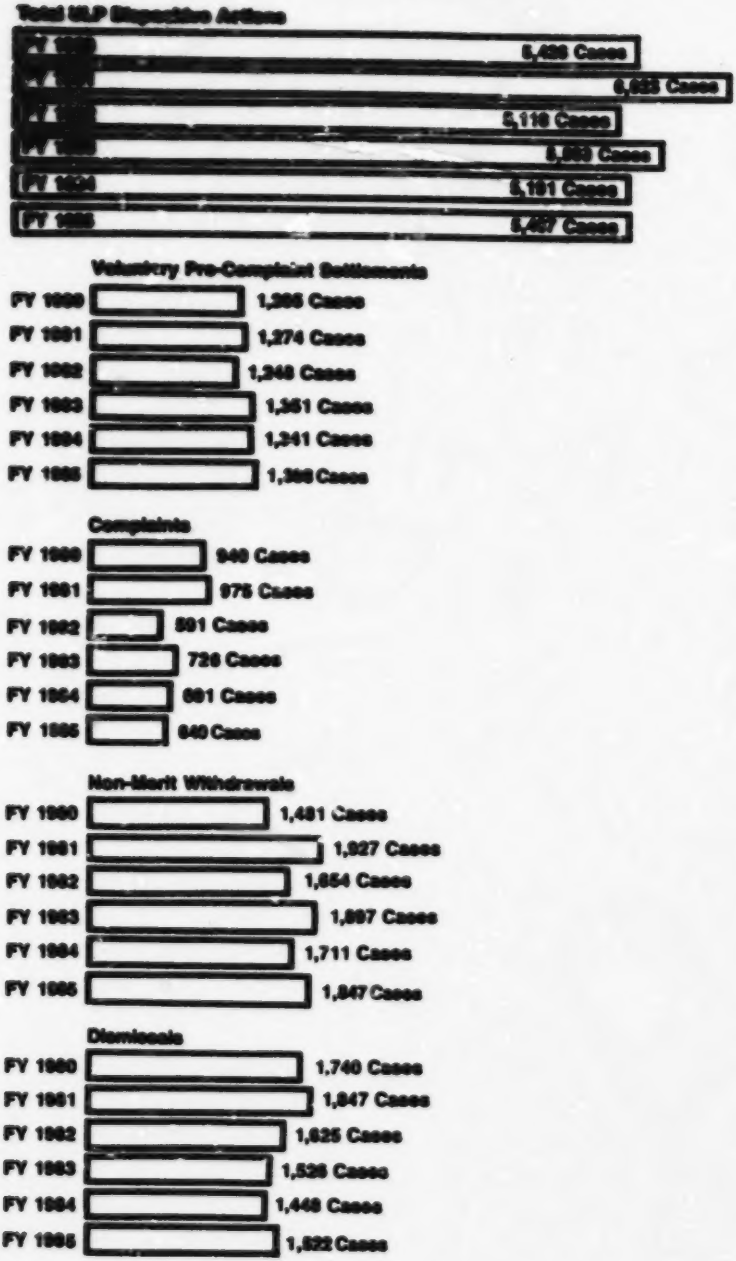
Table 8.—ULP Dispositive Actions



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History of Merit Caseload Disposition

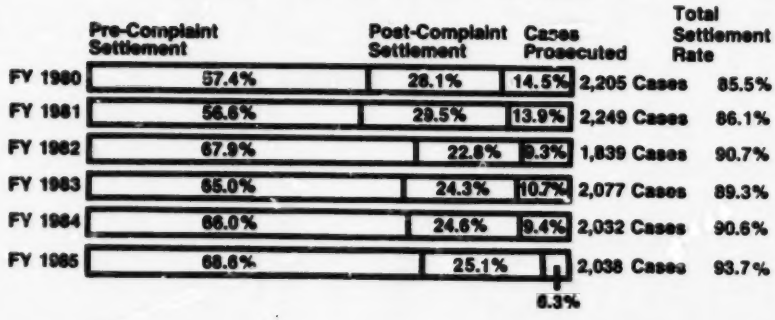
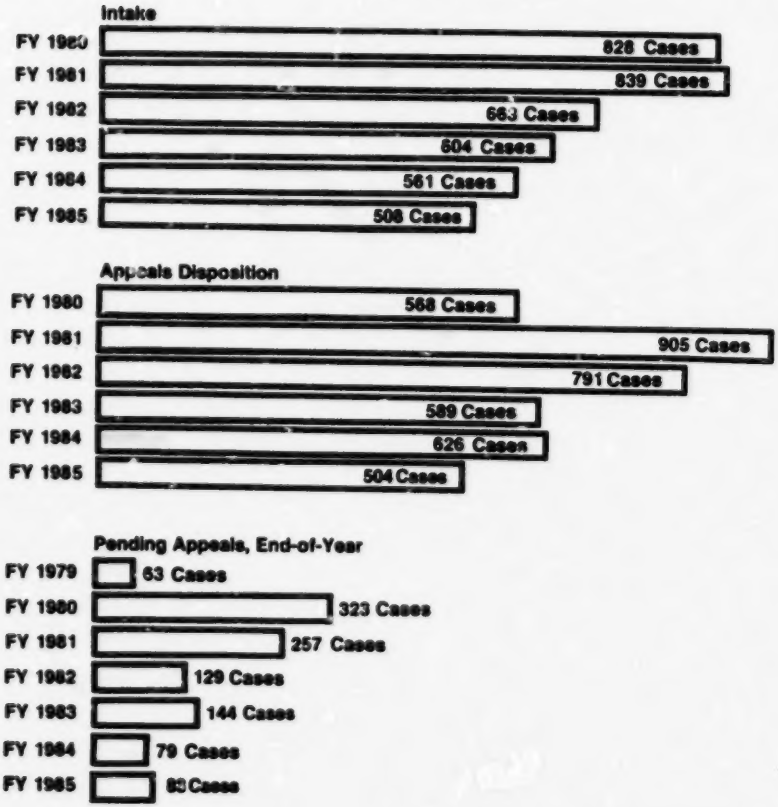


Table 8.—Appeals Caseload



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In Fiscal Year 1985, the representation intake was comprised of seven types of petitions:

"AC" cases—petitions seeking amendment of recognition or certification;

"CU" cases—petitions seeking clarification of an existing unit;

"DA" cases—petitions for determination of eligibility for dues allotments;

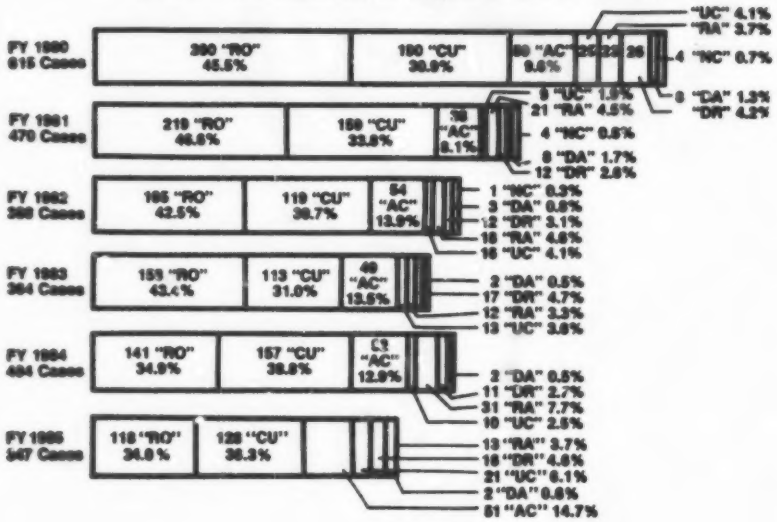
"DR" cases—petitions for decertification of a representative

"RA" cases—agency petitions seeking clarification of representation matters

"RO" cases—petitions for exclusive recognition

"UC" cases—petitions for unit consolidation

Table 9.—Distribution of Representation Intake



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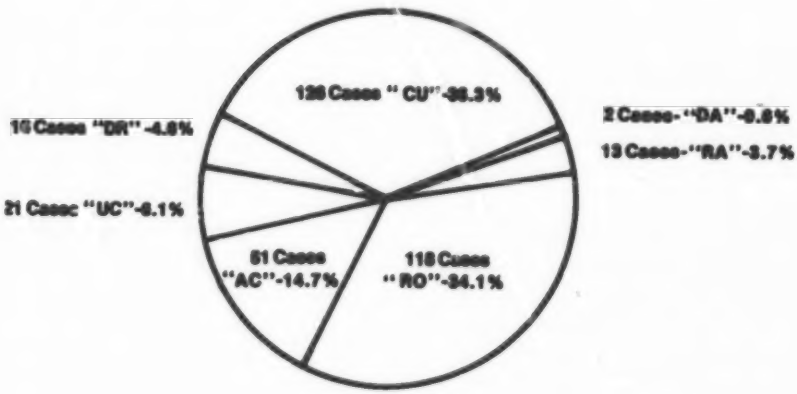
Summarized in the graph below is the percentage distribution of the representation intake in Fiscal Year 1985.

Table 9.—Representation Case Intake
Fiscal Year 1985 - 347 Cases



Appendix II

Table 1.—Cases Received

	FY 1982	FY 1983	FY 1984	FY 1985
Cases Received	163	151	145	133

Table 2.—Cases Closed

	FY 1982	FY 1983	FY 1984	FY 1985
Cases Closed	144	184	162	147

Table 3.—Disposition of Cases Closed in FY 1985

Withdrawn Prior to Procedural Determination		
—settled as a result of staff assistance	8	
—other	25	
		33
Jurisdiction Declined		
—failure to exhaust voluntary efforts	16	
—obligation-to-bargain questions	22	
—other	5	
		43
Withdrawn After Procedural Determination		
—settled at prehearing conference	2	
—fact-finder recommendations accepted	3	
—Panel recommendations accepted	0	
—settled as a result of staff assistance prior to make prior to or after directing the parties to make written submissions	1	
—settled as a result of "med-arb" by a Panel member or staff member	13	
—other	7	
		26
Panel Decisions and Orders	30	
		30
Arbitrator's Opinion and Decision Issued After "Med-Arb" by Panel Member or Staff Member	4	
		4
Outside Arbitration		
—joint request approved	2	
—joint request disapproved	0	
—Panel recommendation of outside arbitration or "med-arb" accepted	3	
—outside arbitration or "med-arb" directed	6	
		11
		147

Table 4.—Issues Most Frequently Appearing in Requests for Assistance Filed in FY 1985

Issues	Requests for Assistance
Hours of Work and Overtime	22
Grievance and Arbitration Procedures	19
Health and Safety	18
Performance Appraisal	18
Merit Promotion	16
Official Time	16
Leave	16
Ground Rules	14
Facilities and Services	11

Table 5.—Employer Participants in Panel Proceedings

	FY 1982	FY 1983	FY 1984	FY 1985
Department of Health and Human Services	18	18	33	29
Department of the Army	16	23	20	21
Department of the Navy	22	18	14	17
Department of the Air Force	21	11	12	16
Veterans Administration		6	7	12
Department of the Treasury	12	17	6	7
Department of Agriculture		6	6	3
General Services Administration				3
Others	60	46	40	25

Table 6.—Union Participants in Panel Proceedings

	FY 1982	FY 1983	FY 1984	FY 1985*
American Federation of Government Employees, AFL-CIO	94	84	90	72
National Federation of Federal Employees	11	16		15
National Treasury Employees Union	13	19	12	14
National Association of Government Employees	11	11	6	13
Federal Employees Metal Trades Council, AFL-CIO			2	5
International Federation of Professional and Technical Engineers, AFL-CIO	7	4	3	4
International Association of Machinists and Aerospace Workers, AFL-CIO			2	2
Overseas Education Association				2
Others	24	7	14	11

*The total exceeds the number of requests for assistance filed during the year because more than one labor organization was involved in some disputes.